

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.
This is a Credit Account Application Form under the Construction Contracts Act 2002. Please read clause 23 on the reverse.

Client Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:				Postcode:
Billing Address:				Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:			Date Incorp. <i>(current owners)</i> :	
Nature of Business:				GST No: <i>(if applicable)</i>
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned <input type="radio"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.:	
Private Address:				Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="radio"/> 20 Days from EOM <input type="radio"/> 7 Days following invoice <input type="radio"/> COD <input type="radio"/> Other:				
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO			Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Glenbrook Machinery Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____ SIGNED (GML): _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Glenbrook Machinery Limited and its successors and assigns ("GML") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods / equipment and/or services to

("the Client") [*Insert Company Name In Box Provided*]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to GML of all monies which are now owing to GML by the Client and all further sums of money from time to time owing to GML by the Client in respect of goods / equipment and services supplied or to be supplied by GML to the Client or any other liability of the Client to GML, and the due observance and performance by the Client of all its obligations contained or implied in any contract with GML, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to GML the Guarantor will immediately on demand pay the relevant amount to GML. In consideration of GML agreeing to supply the Goods / equipment to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to GML registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints GML and each director of GML as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which GML may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** GML on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, GML in connection with:
 - (a) the supply of goods / equipment and/or services to the Client; or
 - (b) the recovery of monies owing to GML by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to GML's nominees' costs of collection and legal costs; or
 - (c) monies paid by GML with the Client's consent in settlement of a dispute that arises or results from a dispute between, GML, the Client, and a third party or any combination thereof, over the supply of goods / equipment and/or services by GML to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood GML's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to GML by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on GML's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to GML, each Guarantor shall be a principal debtor and liable to GML accordingly.
6. If any payment received or recovered by GML is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and GML shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to GML.**
9. I/we irrevocably authorise GML to obtain from any person or company any information which GML may require for credit reference purposes. I/We further irrevocably authorise GML to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with GML as a result of this Guarantee and Indemnity being actioned by GML.
10. The above information is to be used by GML for all purposes in connection with GML considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1
 SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2
 SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
 2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

Glenbrook Machinery Limited – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 "GML" means Glenbrook Machinery Limited, its successors and assigns or any person acting on behalf of and with the authority of NZ MASTER.</p> <p>1.3 "Client" means the persons, entities or any person acting on behalf of and with the authority of the Client requesting GML to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by GML to the Client at the Client's request from time to time (where the context so permits the Goods or Services shall be interchangeable for the other).</p> <p>1.5 "Equipment" means all Equipment including any accessories supplied on hire by GML to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by GML to the Client.</p> <p>1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by GML to the Client.</p> <p>1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using GML's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.8 "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between GML and the Client in accordance with clause 5 below.</p>	<p>any third party not being completed, etc.) which are only discovered on commencement of the Services; or</p> <p>(d) in the event of increases to GML in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond GML's control.</p> <p>10.1 Variations will be charged for on the basis of GML's quotation, and will be detailed in writing, and shown as variations on GML's invoice. The Client shall be required to respond to any variation submitted by GML within ten (10) working days. Failure to do so will entitle GML to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>10.2 At GML's sole discretion, a non-refundable deposit is required prior to pick up and/or delivery of the Goods/Equipment. The deposit payment forms part of the total payment due for the Goods/Equipment and is separate from the bond payment.</p> <p>10.3 At GML's sole discretion a non-refundable deposit may be required.</p> <p>11. Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by GML which may be:</p> <p>(a) on or before delivery of the Goods/Equipment;</p> <p>(b) by way of instalments/progress payments in accordance with GML's payment schedule;</p> <p>(c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by GML.</p> <p>11.1 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and GML.</p> <p>11.2 GML may in its discretion allocate any payment received from the Client towards any invoice that GML determines and may do so at the time of receipt or at any time afterwards. On any default by the Client GML may re-allocate any payments previously received and allocated. In the absence of any payment allocation by GML, payment will be deemed to be allocated in such manner as preserves the maximum value of GML's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.</p> <p>11.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GML nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>12. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to GML an amount equal to any GST GML must pay for any supply by GML under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>12.1 Delivery of Goods/Equipment</p> <p>12.2 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at GML's address; or</p> <p>(b) GML (or GML's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>12.3 At GML's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.</p> <p>12.4 GML may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>12.5 Any time specified by GML for Delivery of the Goods/Equipment is an estimate only. The Client must take Delivery by receipt or collection of the Goods/Equipment whenever they are tendered for Delivery. GML will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then GML shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>12.6 Risk to Goods</p> <p>12.7 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>12.8 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, GML is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GML is sufficient evidence of GML's rights to receive the insurance proceeds without the need for any person dealing with GML to make further enquiries.</p> <p>12.9 If the Client requests GML to leave Goods outside GML's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.</p> <p>12.10 Specifications</p> <p>12.11 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in GML's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by GML.</p> <p>12.12 Access</p> <p>12.13 The Client shall ensure that GML has clear and free access to the site at all times to enable them to undertake the Services. GML shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of GML.</p> <p>12.14 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be</p>	<p>deemed necessary by GML. The Client agrees to 14. indemnify GML against all costs incurred by GML in recovering such Equipment in the event they become bogged or otherwise immovable.</p> <p>14.1 Underground Locations</p> <p>14.2 Prior to GML commencing any work the Client must advise GML of the precise location of all underground services on the site and clearly mark the same. The underground mains services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>14.3 Whilst GML will take all care to avoid damage to any underground services the Client agrees to indemnify GML in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.</p> <p>14.4 Compliance with Laws</p> <p>14.5 The Client and GML shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>14.6 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.</p> <p>14.7 The Client agrees that the site will comply with any health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>14.8 Title to Goods</p> <p>14.9 GML and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid GML all amounts owing to GML; and</p> <p>(b) the Client has met all of its other obligations to GML.</p> <p>14.10 Receipt by GML of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and must return the Goods to GML on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for GML and must pay to GML the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for GML and must pay or deliver the proceeds to GML on demand;</p> <p>(d) the Client should not convert or process the Goods or alter them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of GML and must sell, dispose of or return the resulting product to GML as it so directs;</p> <p>(e) the Client irrevocably authorises GML to enter any premises where GML believes the Goods are kept and recover possession of the Goods;</p> <p>(f) GML may recover possession of any Goods in transit whether or not Delivery has occurred;</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of GML;</p> <p>(h) GML may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>14.11 Personal Property Securities Act 1999 ("PPSA")</p> <p>14.12 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to GML for Services – that have previously been supplied and that will be supplied in the future by GML to the Client.</p> <p>14.13 The Client undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GML may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, GML for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of GML; and</p> <p>(d) immediately advise GML of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>14.14 The Client agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>14.15 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA. Unless otherwise agreed to in writing by GML, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>14.16 The Client shall unconditionally ratify any actions taken by GML under clauses 13.1 to 13.5.</p> <p>14.17 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>14.18 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 36 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.</p>	<p>Security and Charge</p> <p>14.9 In consideration of GML agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.</p> <p>14.10 The Client indemnifies GML from and against all GML's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising GML's rights under this clause.</p> <p>14.11 The Client irrevocably appoints GML and each director of GML as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.</p> <p>14.12 Lease to Own</p> <p>14.13 Upon expiry of the Hire Period, provided the Client has made full payment of all monies payable and fulfilled their obligations under this Contract, the Client may enter into a separate agreement to acquire ownership of the Equipment by payment to GML of the specified amount, and in this case clauses 12 (Title to Goods), 6 (Delivery), 7 (Risk), 17 (Defects), and 17 (Warranty) shall be applicable.</p> <p>14.14 Defects</p> <p>14.15 The Client shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify GML of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford GML an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which GML has agreed in writing that the Client is entitled to reject, GML's liability is limited to either (at GML's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment. Goods/Equipment will not be accepted for return for any reason other than those specified in clause 16.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein); and provided that:</p> <p>(a) the Client has complied with the provisions of clause 16.1; and</p> <p>(b) GML has agreed in writing to accept the return of the Goods; and</p> <p>(c) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and</p> <p>(d) GML will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material as in new condition as is reasonably possible in the circumstances.</p> <p>14.16 GML may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.</p> <p>14.17 Warranty</p> <p>14.18 Subject to the conditions of warranty set out in Clause 17.2 GML warrants that if any defect in any workmanship of GML becomes apparent and is reported to GML within thirty (30) days of the date of Delivery (time being of the essence) then GML will either (at GML's sole discretion) replace or remedy the workmanship.</p> <p>14.19 The conditions applicable to the warranty given by Clause 17.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Client to properly maintain any Goods; or</p> <p>(ii) failure on the part of the Client to follow any instructions or guidelines provided by GML; or</p> <p>(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall cease and GML shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without GML's consent.</p> <p>(c) in respect of all claims GML shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.</p> <p>14.20 For Goods not manufactured by GML, the warranty shall be the current warranty provided by the manufacturer of the Goods. GML shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The conditions applicable to the warranty given on Goods supplied by GML are contained on the "Warranty Document" that will be supplied with the Goods.</p> <p>14.21 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by GML as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. GML shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>14.22 Consumer Guarantees Act 1993</p> <p>14.23 This Contract is subject to the provisions the Consumer Guarantees Act 1993 ("CGA") in all cases except where the Client is not contracting as a consumer within the meaning of the CGA.</p> <p>14.24 Intellectual Property</p> <p>14.25 Where GML has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the</p>
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Glenbrook Machinery Limited – Terms & Conditions of Trade

<p>property of GML. Under no circumstances may such designs, drawings and documents be used without the express written approval of GML.</p> <p>19.2 The Client warrants that all designs, specifications or instructions given to GML will not cause GML to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify GML against any action taken by a third party against GML in respect of any such infringement.</p> <p>19.3 The Client agrees that GML may (at no cost) use the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which GML has created for the Client.</p> <p>20. Default and Consequences of Default</p> <p>20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at GML's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>20.2 If the Client owes GML any money the Client shall indemnify GML from and against all costs and disbursements incurred by GML in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and our own basis, GML's collection agency costs, and bank dishonour fees).</p> <p>20.3 Further to any other rights or remedies GML may have under this Contract, if a Client has made payment to GML, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GML under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.</p> <p>20.4 Without prejudice to GML's other remedies at law GML shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GML shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to GML becomes overdue, or in GML's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by GML;</p> <p>(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>21. Cancellation</p> <p>21.1 Without prejudice to any other remedies GML may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GML may suspend or terminate the supply of Goods/Equipment to the Client. GML will not be liable to the Client for any loss or damage the Client suffers because GML has exercised its rights under this clause.</p> <p>21.2 GML may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice GML shall repay to the Client any money paid by the Client for the Goods/Equipment. GML shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>21.3 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by GML as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>21.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>22. Privacy Policy</p> <p>22.1 All emails, documents, images or other recorded information held or used by GML is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. GML acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (the Act) including Part II of the OECD Guidelines and as set out in the Act. GML acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by GML that may result in serious harm to the Client, GML will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.</p> <p>22.2 Notwithstanding clause 22.1, privacy limitations will extend to GML in respect of Cookies where the Client utilizes GML's website to make enquiries. GML agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to GML when GML sends an email to the Client, so GML may collect and review that information (collectively "Personal Information").</p> <p>If the Client consents to GML's use of Cookies on GML's website and later wishes to withdraw that consent, the Client may manage and control GML's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>22.3 The Client authorises GML or GML's agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or</p>	<p>(ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by GML from the Client directly or obtained by GML from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.</p> <p>22.5 The Client shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Client retained by GML and the right to request that GML correct any incorrect Personal Information.</p> <p>GML will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>22.7 The Client can make a privacy complaint by contacting GML via e-mail. GML will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.</p> <p>23. Suspension of Services</p> <p>Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:</p> <p>(a) GML has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:</p> <p>(i) the payment is not paid in full by the due date for payment in accordance with clause 5.6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to GML by a particular date; and</p> <p>(iv) GML has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if GML suspends work, it:</p> <p>(i) is not in breach of Contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and</p> <p>(iii) is entitled to an extension of time to complete the Contract; and</p> <p>(iv) keeps its rights under the Contract including the right to terminate the Contract and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.</p> <p>(c) if GML exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to GML under the Contract and Commercial Law Act 2017; or</p> <p>(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of GML suspending work under this provision;</p> <p>(d) due to any act or omission by the Client, the Client effectively precludes GML from continuing the Services or performing or complying with GML's obligations under this Contract, then without prejudice to GML's other rights and remedies, GML may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by GML as a result of such suspension and commencement shall be payable by the Client as if they were a variation.</p> <p>22.3.2 If pursuant to any right conferred by this Contract, GML suspends the Services and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, GML shall be entitled to terminate the Contract, in accordance with clause 21.</p> <p>24. Service of Notices</p> <p>Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>25. Trusts</p> <p>If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not GML may have notice of the Trust, the Client covenants with GML as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of GML (GML will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p>	<p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>28.5</p> <p>29. Title to Equipment</p> <p>29.1 The Equipment is and will at all times remain the absolute property of GML.</p> <p>29.2 If the Client fails to return the Equipment to GML then GML or GML's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>The Client is not authorised to pledge GML's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>30. Client's Responsibilities</p> <p>The Client shall:</p> <p>(a) satisfy itself at commencement that the Equipment is suitable for its purposes;</p> <p>(b) notify GML immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;</p> <p>(c) maintain the Equipment as is required by GML (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);</p> <p>(d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions, whether supplied by GML or posted on the Equipment;</p> <p>(e) ensure that:</p> <p>(i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to GML upon request;</p> <p>(ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;</p> <p>(iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;</p> <p>(f) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or GML relating to any such matters or occurrences;</p> <p>(g) comply with all workplace health and safety laws relating to the Equipment and its operation;</p> <p>(h) on termination of the Hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to GML;</p> <p>(i) refund the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;</p> <p>(j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;</p> <p>(k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;</p> <p>(l) indemnify and hold harmless GML in respect of all claims arising out of the Client's use of the Equipment. The Client shall not:</p> <p>(a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(b) exceed the recommended or legal load and capacity limits of the Equipment;</p> <p>(c) use or carry any illegal, prohibited or dangerous substances on or in the Equipment;</p> <p>(d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.</p> <p>Immediately on request by GML the Client will pay:</p> <p>(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to GML;</p> <p>(b) all costs incurred in cleaning the Equipment;</p> <p>(c) all costs of repairing any damage caused by:</p> <p>(i) the ordinary use of the Equipment;</p> <p>(ii) the negligence of the Client or the Client's agent;</p> <p>(iii) vandalism, or (in GML's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;</p> <p>(d) the cost of fuels and consumables provided by GML and used by the Client;</p> <p>(e) any:</p> <p>(i) lost hire fees GML would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;</p> <p>(ii) costs incurred by GML in picking up and returning the Equipment to GML's premises if the Client does not return the Equipment to GML's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;</p> <p>(iii) insurance excess payable in relation to a claim made by either the Client or GML in relation to any damage caused by, or to, the hire Equipment whilst the same is hired to the Client and irrespective of whether charged by the Client's insurers or GML's.</p>	<p>29. General</p> <p>Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).</p> <p>29.3 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforcement of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>29.4 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Pukekohe, New Zealand.</p> <p>29.5 GML shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by GML of these terms and conditions (alternatively GML's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment Hire).</p> <p>29.6 GML may license and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.</p> <p>29.7 The Client cannot licence or assign without the written approval of GML.</p> <p>29.8 GML may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of GML's sub-contractors without the authority of GML.</p> <p>29.9 The Client agrees that GML may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for GML to provide Goods/Equipment to the Client.</p> <p>29.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdown (including worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.</p> <p>29.11 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p> <p>30. Additional Terms & Conditions Applicable to Hire Only</p> <p>30.1 Hire Period</p> <p>Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.</p> <p>30.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from GML's premises and will continue until the return of the Equipment to GML's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>30.3 If GML agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves GML's premises and continue until the Client notifies GML that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.</p> <p>30.4 At GML's sole discretion, then the Client shall be liable for all costs incurred by GML from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at GML's standard rates, (which shall include any stand down time experienced to attend required site induction courses)).</p> <p>30.5 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.</p> <p>30.6 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless GML confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies GML immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p> <p>31. Risk to Equipment</p> <p>31.1 GML retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.</p> <p>31.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies GML for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.</p> <p>31.3 The Client will insure, or self-insure, GML's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>31.4 The Client accepts full responsibility for and shall keep GML indemnified against all liability in respect of all claims, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the</p>
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