TERMS AND CONDITIONS OF TRADE – METIND LIMITED T/A IMBMS

1. DEFINITIONS

1.1 "IMBMS" shall mean METIND Limited, or any agents or employees thereof.

1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from "IMBMS".

1.3 "Products" or "Products & Services" shall mean:
all or any of products, goods and services provided by "IMBMS" to the Customer and shall include without limitation the supply of all threaded rebar and mechanical rebar couplers, terminators and all associated products and services; all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by IMBMS to the Customer, including all of the Customer's present and after-acquired Products that IMBMS has supplied or in which Products or materials supplied by IMBMS have been attached to or incorporated.

1.4 "Price" shall mean the cost of the Products and Services as agreed between IMBMS and the Customer and includes all disbursements eg charges IMBMS pay to others on the Customer's behalf subject to clause 5 of this contract.

2. ACCEPTANCE

Any instructions received by IMBMS from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer [whether a company or partnership or business entity or a natural person(s)] and each of the person signing this application authorises IMBMS to collect, retain and use any information about the Customer / Owner / Partner / Director / Guarantor / person(s) who have signed this application form, for the purpose of assessing the Customer's / Guarantor(s)'s credit worthiness, enforcing any rights under this contract, for collection of amounts due, or marketing any Products and Services provided by IMBMS to any other party. The collection of information may be done either by IMBMS directly or through its business associate / group companies from credit reporting agencies and others such as Creditworks Data Solutions Limited (www.creditworks.co.nz); Equifax Information Services and Solutions Limited (www.equifax.co.nz); Centrix Group Limited (www.centrix.co.nz).

3.2 The Customer authorises IMBMS to disclose any information obtained to any person or agency or lawyer, for the purposes set out in clause 3.1 including but not limited to any credit or debt collection agency.

3.3 Where the Customer is a natural person the authorisations under clauses 3.1 and 3.2 are consents (to be standing ones for use from time to time until all dues owing are paid in full) for the purposes of the Privacy Act 2020 or any amendment or new Privacy Act that may come hereafter.

4. CREDIT FACILITY/SUPPLY ORDERS/REFUSAL OF CREDIT

IMBMS is not obligated to grant credit on receipt of this application. Even where IMBMS has given a credit facility, IMBMS can refuse to make fresh supplies under that facility whether there is sufficient room to accommodate such supplies or not, with or without assigning any reason for such refusal. IMBMS shall have no obligation to enquire into the authority of any person placing orders for supply in the name of the Customer. Credit limit may vary over a period due to level of trading and all terms in this agreement would apply for total outstanding due. Credit limit increases are deemed requested/accepted by all signatories also in personal capacity where guaranteed when orders/supplies are over the limit.

5. PRICE

5.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by IMBMS at the time of the contract.

5.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of IMBMS between the date of the contract and delivery of the Products and Services also for services—install, delivery(fuel costs) etc.

6. PAYMENT, PAYMENT ALLOCATION & CHARGING OF INTEREST

6.1 Payment for Products and Services shall be made in full without deduction for any reason whatever (except prior agreed Retentions, if any) on or before the 20th day of the month following the date of the invoice / "payment claim' under Construction Contracts Act ("the due date").

6.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.

6.3 Any expenses, disbursements and collection/legal costs incurred by IMBMS in the enforcement of any rights contained in this contract, including expenses for defending/ payments towards voidable preference claims (insolvency transactions) as also including any reasonable solicitor's fees or debt collection agency fees, shall be paid by the Customer in full on actuals basis.

6.4 Receipt of a payment plan, shall not constitute payment until paid/realised in full.

6.5 A deposit may be required (even where a credit limit is approved).

6.6 Any provision for a "pay when paid" or a "pay if paid" clause shall not apply to IMBMS when Products and Services are provided by it.

6.7 IMBMS may in its discretion allocate any payment received from the Customer towards any invoice that IMBMS determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by IMBMS, payment shall be deemed to be allocated in such manner as preserves the maximum value of IMBMS's purchase money security interest in the Products and Services.

7. PAYMENT VALIDITY

7.1 The Customer acknowledges that IMBMS continues to supply the Customer on the condition that all payment received by IMBMS from the Customer are made at a time when the Customer is able to pay its debts as they become due from the Customer's own money.

7.2 The Customer further acknowledges that the Customer will not make any payments to IMBMS with a view to giving IMBMS a preference over any other creditors of the Customer.

8. QUOTATION

8.1 Where a quotation is given by IMBMS for Products and Services:

8.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

8.1.2 Price shall be exclusive of goods and services tax unless specifically stated to the contrary;

8.1.3 IMBMS reserve the right to alter the quotation because of circumstances beyond its control before acceptance.

8.1.4 Late acceptance of quote after expiry date is subject to material price / other cost increases from quote expiry date.

8.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

9. EXTRAS, VARIATIONS & RETENTIONS:

9.1 Where Products & Services are required either as a variation or as an extra to quotation / existing supply arrangement / contract, the Customer agrees to pay for the additional cost at either the price as agreed for such extra or variation and where a specific price has not been agreed, at the current price of IMBMS. If IMBMS has already manufactured or fabricated the supply as per original drawings / orders supplied by the Customer before receiving any variation request in writing, the Customer will be liable to pay for such materials including labour and related expenses, over and above payments for such variations and extras.

9.2 IMBMS may insist on a written site instruction / order no. / variation or extra to contract request from the Customer before commencing additional or varied supply and if there is any delay on the part of the Customer in providing such written instructions, then IMBMS will not be liable in any manner whatsoever, for any temporary or final delay for the completion of the job.

9.3 Retentions where specifically agreed by IMBMS may be withheld from payments due to IMBMS. 50% of such retentions become payable on completion of supply by IMBMS and 50% of such retentions become payable 90 days after that date. If retention moneys are not paid when due, then the Customer will be liable for interest calculated at 2% per month or part of month, for the period of delay in payment and for the cost of any recovery action by IMBMS.

10. RISK AND DELIVERY

10.1 The Products and Services remain at IMBMS risk until delivery to the Customer.

10.2 Delivery of Products and Services shall be deemed complete when IMBMS, or an agent including a manufacturer, gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

10.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to IMBMS making time of the essence.

10.4 Where IMBMS delivers Products and Services to the Customer by instalments and IMBMS fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

10.5 The Customer will ensure that IMBMS is provided with reasonable access to the delivery address together with adequate room for unloading. The Customer indemnifies IMBMS against all costs and liabilities IMBMS incurs with or arising out of the delivery or in unloading.

11. AGENCY

11.1 The Customer authorises IMBMS to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.

11.2 Where IMBMS enters into a contract of the type referred to in clause 11.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

12. RETENTION OF TITLE ("PPSA" & "PPSR")

12.1 The Customer grants to IMBMS a purchase money security interest ("PMSI") as defined in Personal Property Security Register (PPSA) in the Products and agrees that the PMSI has attached to all goods supplied now or in the future to the Customer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein.

12.2 Title in any Products and Services supplied by IMBMS passes to the Customer only when the Customer has made payment in full for all Products and Services provided by IMBMS and of all other sums due to IMBMS by the Customer on any account whatsoever. Until all sums due to IMBMS by the Customer have been paid in full, IMBMS has a security interest in all Products and Services.

12.3 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with IMBMS until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall deemed to be assigned to IMBMS as security for the full satisfaction by the Customer of the full amount owing between IMBMS and Customer.

12.4 The Customer gives irrevocable authority to IMBMS to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if IMBMS believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. IMBMS shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. IMBMS may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as IMBMS reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

12.5 The following shall constitute defaults by the Customer. Non payment of any sum by the due date. The Customer intimates that it will not pay any sum by the due date. Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services. Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to IMBMS remains unpaid. The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days. Any material adverse change in the financial position of the Customer.

12.6 In the event of a default IMBMS is entitled to enforce all the rights available to it under these terms and conditions of trade, at the cost, risk and responsibility of the Customer.

12.7 Where Products and Services are retained by IMBMS pursuant to clause 12.4 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

12.8 If the Credit Repossession Act applies to any transaction between the Customer and IMBMS, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

12.9 The Customer waives his/its rights :

12.9.1 To receive a copy of any verification statement;

12.9.2 To receive a copy of any financing charge statement;

12.9.3 To receive any notice that IMBMS intends to sell the Products or to retain the Products on enforcement of the security interest (as defined in PPSA) granted to IMBMS under these terms;

12.9.4 To object to IMBMS proposal to retain the Products in satisfaction of any obligation owed by the Customer to IMBMS;

12.9.5 To receive a statement of account on sale of the Products;

12.9.6 To redeem the Products; and

12.9.7 Where any Products becomes an accession, as defined in the PPSA, to not have any Products damaged when IMBMS removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA.

12.10 The signatories to this application hereby expressly agree to subordinate any PPSR registered in their personal names; their other company names or their trusts' names to that of IMBMS and declare that they have authority to agree for this subordination.

12.11 Where there is a guarantor a PPSR would also be registered against the guarantor name(s).

13. SECURITY INTEREST

The Customer gives IMBMS a general security interest in all of the Customer's present and after-acquired property that IMBMS has performed services on or to or in which Products or materials supplied or financed by IMBMS have been attached or incorporated – further as additional security, the Customer/Guarantor give(s) IMBMS a security interest on all their present and after acquired property as well with rights to appoint Receiver(s) for collection at its sole discretion, under Receiverships Act 1993, treating this application as 'General Security Agreement' signed by the Customer/Guarantor with full secured party security interests, rights & benefits in all of the assets and undertakings of the Customer/Guarantor, to IMBMS.

14. LIABILITY & CONSUMER GUARANTEES ACT

14.1 In respect of implied warranties, conditions or terms imposed on IMBMS by The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes, IMBMS's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statutes.

14.2 Except as provided by clause 14.1 IMBMS shall not be liable for:

14.2.1 Any loss or damage of any kind whatsoever including loss of profits consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by IMBMS to the Customer; and

14.2.2 The Customer shall indemnify IMBMS against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of IMBMS or otherwise, whether or not brought by any person in connection with any matter, act, omission, or error by IMBMS its agents or employees in connection with the Products and Services.

14.3 Subject to clause 14.4 the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from IMBMS for the purposes of a business in terms of that Act.

14.4 Should IMBMS is proved to have breached any of its obligations to a Customer, then IMBMS's liability to that Customer shall be limited to the lesser of either:

14.4.1 The costs of replacing/repairing the Products in respect of which the obligation has been breached with product or equivalent specification;

14.4.2 The price for those Products paid by the Customer.

14.5 IMBMS shall have no liability for discrepancies between estimates for quantities based on plans or other information given by or on behalf of the Customer and quantities actually required. The Customer warrants it has verified and accepts responsibility for the accuracy of quantities ordered/drawings provided.

14.6 All deliveries asked for and made to unattended sites will be customer's sole responsibility with no liability to IMBMS.

15. WARRANTY

15.1 Manufacturer's warranty applies where applicable.

15.2 Any written warranty that IMBMS provide to the Customer will also form part of these terms and conditions of trade.

15.3 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Products and Services except where Products are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

15.4 IMBMS does not provide any warranty that the Products are fit and suitable for the purposes for which they are required by the Customer and shall not be liable if they are not.

16. COPYRIGHT AND INTELLECTUAL PROPERTY

IMBMS, owns and has copyright in all work, software, systems, solutions, drawings, designs, specifications, electronic data and documents produced by IMBMS in connection with the Products and Services provided pursuant to this contract and the client may use the Products and Services only if paid for in full and for the purpose for which they were intended and supplied by IMBMS.

17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES OR OTHER/CORPORATE GUARANTORS (All Signatories are Guarantors irrespective of other positions / designations)

If the Customer is a company or trust, the director(s) or trustee(s) and guarantor(s) signing this contract, in consideration for IMBMS agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to IMBMS the payment of any and all monies now or hereafter owed by the Customer to IMBMS including for supplies under requested/deemed credit limit increases and indemnify IMBMS against non-payment by the Customer – not just the initial credit limit but all increases granted thereafter to the customer – which shall be deemed to be with my/our full consent. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under all the terms and conditions of this contract and for payment of all sums due hereunder. Voidable Preference Claims by Liquidators: In the event of IMBMS being called upon and forced to make any payment to liquidator(s) under voidable preference transactions (insolvent transactions), the Personal Guarantee will cover any such payment including all legal costs to defend the same – as a new additional claim against guarantor(s) even if they had previously made payments / settlements to pay off the IMBMS dues, separately for voidable preference payment / expenses.

18. CLAIMS AND RETURN OF PRODUCTS

18.1 The Customer shall be deemed to have accepted the Products and Services provided unless the Customer notifies IMBMS otherwise within 5 days of delivery of the Products and Services to the Customer.

18.2 Products will only be accepted for return with prior consent of IMBMS. A 15% restocking fee applies. Returned Products must be accompanied by original invoice, in unused and undamaged condition and still in original packaging where applicable. The Customer is liable for all costs associated with the return. There will be no returns on customised orders.

18.3 In the event of damage in transit the Customer is required to send to IMBMS a written request for replacement together with the delivery docket and evidence that this was endorsed at the time of receipt of Products that the Products were damaged prior to unloading.

19. CANCELLATION

19.1 Once an order has been accepted by IMBMS, it can only be cancelled, varied or suspended (whether in whole or in part) upon the following terms and conditions:

19.1.1 No cancellation, variation or suspension will be effective or recognised unless, and only to the extent that IMBMS agrees in writing to such cancellation, variation or suspension;

19.1.2 The Customer agrees to accept delivery of all Products held by IMBMS in respect of such order and all Products in transit to or subsequently delivered to IMBMS for such order;

19.1.3 The Customer agrees to pay all costs, expenses and liabilities incurred by IMBMS in consequence of the cancellation, variation or suspension of the order.

20. CAVEAT

The Customer / Guarantor(s) charge(s) in favour of IMBMS as security for the Customer's obligations to IMBMS, all rights, title and interest (including beneficial interest in any Trust) in any land and / or landed property held now by the Customer / Guarantor(s) either alone or jointly with anyone or acquired by the Customer / Guarantor(s) at any time hereafter, also as a trustee (with deemed consents obtained from other trustees, if any). If the Customer / Guarantor(s) default(s) in payment of any amount owed to IMBMS, the Customer / Guarantor(s) specifically authorise(s) IMBMS to lodge a caveat and/or mortgage against any such property and appoint(s) IMBMS to be the Customer/Guarantor(s)'s Attorney for this purpose if a security charge is necessitated to protect IMBMS's interests, at IMBMS's discretion, in a Memorandum or Mortgage registration format of IMBMS's choice, treating this agreement also as a deed for the purpose of such security registrations.

21. ASSIGNMENT

In consideration of the goods supplied to the Customer by IMBMS the Customer assigns to IMBMS absolutely all the Customer's right title and interest in any debt which is due to the Customer by any third party the Customer has on sold the Products supplied by IMBMS whether or not the amount of that debt due to the Customer by the third party comprises only a part of the amount of the debt for Products supplied by IMBMS to the Customer.

22. MISCELLANEOUS

22.1 IMBMS shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

22.2 Failure by IMBMS to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations IMBMS has under this contract.

22.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.4 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of IMBMS.

22.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.

22.6 If required by IMBMS the Customer will store Products and Services supplied by IMBMS in a way that enables them to be identified as having been supplied by IMBMS.

22.7 IMBMS will have powers to modify the terms any time and a notice to Customer of any such modification shall be binding on the Customer.

22.8 All Acts referred to shall be construed with further amendments if any.

22.9 Any electronic signing is deemed with full knowledge/acceptance of all signatories including by witness, who is to be briefed of this by signatory(ies).

22.10 Where there is a subcontract agreement, customer expressly agrees that the terms signed herein will apply additionally to the extent not in consistent with specific terms expressly listed/agreed by IMBMS, irrespective of anything contrary in subcontract agreement attempting to exclude this credit application – terms of trade on other documents.

23. FORCE MAJEURE:

IMBMS shall not be liable for any failure or delay in supply or delivery of the Products and Services where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of IMBMS including, but not limited to, war, strikes, lockouts, industrial disputes/unrest, transport delays, government restrictions or intervention, fire, acts of God, breakdown of Plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotion, communicable diseases, terrorist acts or accidents of any kind-and IMBMS can increase prices to cover increased costs arising due to any of above Force Majeure events.

24. GOVERNING LAW & JURISDICTION:

This application will be construed and governed by the Laws of New Zealand and the courts in New Zealand will have jurisdiction on any action or claim that may be brought about.

Print Name ..... Signed..... Date: ……