

Legal Name:

Trading Name:

Business Postal Address: BOX NUMBER TOWN / SUBURB CITY
 POSTCODE

Physical Address: NUMBER / STREET
 TOWN / SUBURB CITY
 POSTCODE

Email Address:

Business Telephone: Residential Telephone:

Business Facsimile: Mobile Telephone:

Legal Entity: Limited Company Partnership Sole Trader If other, please specify
 (PLEASE TICK ONE)

Co. Registration No: GST No.

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

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

LAST NAME FIRST NAME MIDDLE NAME DATE OF BIRTH

RESIDENTIAL ADDRESS

LAST NAME FIRST NAME MIDDLE NAME DATE OF BIRTH

RESIDENTIAL ADDRESS

LAST NAME FIRST NAME MIDDLE NAME DATE OF BIRTH

RESIDENTIAL ADDRESS

Please complete and return to:
 Earthquip Group Limited, P.O. Box 300 800, Albany, Auckland 0752
 New Zealand
 Send scanned copy to: accounts@earthquip.co.nz

Group ID

To: **Earthquip Group Limited**

In consideration of the Earthquip Group Limited continuing to supply goods and / or services from time to time to:

(The Customer)

at my / our request (which request is hereby acknowledged).

I / We:

(Name of Guarantor/s)

jointly and severally guarantee to the Earthquip Group Limited and its successors and assigns payment of all monies now owing or at any time or times to become owing to the Earthquip Group Limited by the Customer.

I / We further acknowledge that this guarantee shall be a continuing or standing guarantee and that no granting of time, credit or any other indulgence or concession to the Customer by the Earthquip Group Limited and waiver, compromise or neglect to sue on the part of the Earthquip Group Limited shall limit or impair our liability to the Earthquip Group Limited. As between the Earthquip Group Limited and us, we shall be deemed to be principal debtors and liable to the Earthquip Group Limited accordingly.

The following is to be dated and signed by the Guarantor/s (who acknowledge(s) receipt of a copy of this document).

Dated: _____

(DAY)

(MONTH)

(YEAR)

Guarantor/s

Signature of guarantor _____ Signature of guarantor _____

Name of guarantor _____ Name of guarantor _____

Date of birth _____ Date of birth _____

Address _____ Address _____

Witnessed in the presence of:

Witnessed in the presence of:

Signature of witness _____ Signature of witness _____

Name of witness _____ Name of witness _____

Occupation _____ Occupation _____

Address _____ Address _____



Terms of Trade

- 9.2 Where, in relation to any Goods, the manufacturer's warranty provides a greater warranty entitlement than provided for in this clause 9, Gough Group will pass through the benefit of that warranty as it is received from the manufacturer.
- Exclusion of liability*
- 9.3 The Gough Group shall not be liable whether in contract (including under any warranty), tort (including negligence), equity or otherwise:
- (a) Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
 - (b) For loss caused by any factors beyond the Gough Group's control;
 - (c) For loss of revenue, loss of profits, loss of production, loss of use, loss of contract, loss of business or loss of opportunity, whether arising directly or indirectly, or for any indirect or consequential loss of any kind;
 - (d) in relation to any second hand Goods supplied;
 - (e) Where the terms of any written warranty have not been complied with or any manufacturer's handbook provided to you has not been complied with.
- 9.4 Except as set out in clauses 9.1 to 9.3, neither the Supplier nor any other member of the Gough Group will be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise for any loss or damage of any nature under these Terms or in relation to any Goods or Services provided to you.
- Time limit for bringing any claim*
- 9.5 In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, the Supplier will accept no liability unless notified by you in writing within three days of delivery.
- 9.6 You may not make or pursue any claim against any Gough Group member in relation to the provision of any Goods or Services unless you have given the Supplier written notice of the claim (including full particulars of the grounds on which the claim is based) within:
- (a) 1 year of the relevant Good or Service being supplied; or
 - (b) if the claim relates to a breach of a written warranty expressed for a defined period, that defined period.
- Return of parts*
- 9.7 If permitted under the Supplier's parts return policy, goods may be returned to the Supplier. These must be freight paid. Where the Supplier elects to repair defective Goods, the Supplier will use all reasonable endeavours to repair the Goods as soon as possible, but will not be liable for any delay in completing the repairs.
- 10 PPSA**
- 10.1 *Security:*
You acknowledge and agree that:
- (a) by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to the Supplier in all Goods previously supplied by the Supplier to you (if any) and all after acquired Goods supplied by the Supplier to you (or for your account); and
 - (b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.
- 10.2 *Financing Statement:*
You undertake to:
- (a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which a member of the Gough Group may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without the Gough Group's prior written consent; and
 - (c) give the Gough Group not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details including, but not limited to, changes in your address, facsimile number, trading name or business practice.
- 10.3 *Waiver and contracting out*
- (a) Unless otherwise agreed to in writing by the Gough Group, you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
 - (b) To the maximum extent permitted by law, you waive your rights and, with the Gough Group's agreement, contract out of your rights under the sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.
 - (c) You agree that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms and, with the Gough Group's agreement, contract out of such sections.
 - (d) You and each member of the Gough Group agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the member of the Gough Group is not the secured party with priority over all other secured parties in respect of those Goods.
- 11 General Terms**
- 11.1 *Mediation*
If a dispute arises and the Supplier considers the dispute is one which is suitable for mediation, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of LEADR.
- 11.2 *Cancellation*
You may not cancel any order for Goods or part of it without the Supplier's written consent. If you do so, in addition to any other rights the Supplier may have, the Supplier may retain any deposit paid. The Supplier shall have the right to cancel any orders for Goods which it has accepted, if due to circumstances beyond the Supplier's control it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect or, if in the Supplier's opinion, a satisfactory servicing or repair cannot be achieved.
- 11.3 *Waiver or variation*
Waiver or variation of these Terms by any member of the Gough Group will only be effective if given in writing by an authorised person. If any member of the Gough Group waives any of these Terms the waiver will not affect that member's rights under these Terms at any future time or the rights of any other member of the Gough Group at any time.
- 11.4 *Changes to these Terms*
We may change these terms of trade at any time by changing or removing existing terms or adding new ones. Any change applies from the time it is published on our web site at www.goughgroup.co.nz. Refer Quick Links
- 11.5 *Governing law*
These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between you and the Gough Group.
- 11.6 *The Privacy Act*
You and any guarantor (if relevant) authorise each member of the Gough Group to collect and hold personal information from any source it considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes or for any other related purpose. You further authorise each member of the Gough Group to disclose personal information, held by it for the purposes set out above, to each other and to any other parties. You understand that you have a right of access and may request correction of personal information held by the Gough Group about you.
- 11.7 *Consumer Guarantees Act (CGA)*
If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring goods or Services for business purposes the CGA shall not apply.
- 11.8 *Electronic Messages*
You and any guarantor (if relevant) consent to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from any member of the Gough Group from time to time.