



KAZE LTD – Trading as HEAVY METAL HAULAGE

APPLICATION FOR CREDIT ACCOUNT AND TERMS OF TRADE

BUSINESS TYPE: (please circle one)		Individual	Partnership	Company	Trust	Incorporated Society	Club
FULL LEGAL NAME:							
BUSINESS TRADING NAME:							
BUSINESS ADDRESS:							
PHONE NO:				EMAIL:			
COMPANY DETAILS							
Company Incorporation Number:				Date of Incorporation:			
Company Directors							
Full Name		Address			Date of Birth		
1.							
2.							
3.							
4.							
COMPANY/TRUST/INCORPORATED SOCIETY/CHARITABLE TRUST/CLUB							
Name of Person acting on behalf:							
Designation:							
Name:							
Address:							
Phone Number:							
INDIVIDUAL/PARTNERS/TRUSTEES DETAILS:							
Full Name		Address			Date of Birth		
1.							
2.							
3.							
4.							
Do you use or have you ever used or traded under a different name, if so please state name:							
GUARANTORS DETAILS – Full Name:							
Postal Address:				Phone No:			
CREDIT REFERENCES:							
Company				Phone No:			
1.							
2.							
3.							

APPLICATION AND ACKNOWLEDGEMENT

- A. I/WE hereby make application for a credit account to be opened in the name of the Customer. WE CONFIRM WE HAVE READ AND ACCEPT THE FOLLOWING TERMS AND CONDITIONS OF TRADE ("the terms"), and in particular we agree to pay all accounts by due date specified on the invoice. I/WE understand that failure to do so renders us liable for default interest (full details as set out in the terms.)
- B. I/WE acknowledge that pending payment in full of all amounts outstanding that Kaze retains ownership of the goods and proceeds of sale (full details as set out in the terms.)
- C. I/WE acknowledge that the terms create a security interest pursuant to the Personal Property Securities Act 1999 ("PPSA" or the "Act") and that Kaze is entitled to register a financing statement against the name or names of the Customer on the Personal Property Securities Register "PPSR".)

CUSTOMER	In the presence of WITNESS
<i>Customer Name:</i>	Witness Name:
<i>Customer Signature:</i>	Witness Address:
	Witness Occupation:
	Witness Signature:

Signed for and on behalf of Kaze Ltd ("Kaze")

GUARANTEE

IN CONSIDERATION of the company entering into the terms with the Customer at the Guarantor's request the guarantor unconditionally and irrevocably guarantees the payment of all monies owing by the Customer to Kaze and the performance by the Customer of the terms and conditions in the terms.

THE GUARANTOR covenants with Kaze that:

1. No release delay or other indulgence by Kaze to the Customer or to the Customer's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or otherwise affect the liability of the Guarantor as a guarantor.
2. As between the Guarantor and Kaze the Guarantor may for all purposes be treated as the Customer and Kaze shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.
3. Should there be more than one Guarantor their liability under this guarantee shall be joint and several.

Signed by Guarantor/s: and

In the presence of Witness:

Witness Signature:..... Witness Name:.....

Witness Occupation:..... Witness Address:

TERMS OF TRADE

1. Definitions

In these conditions unless the context otherwise requires:

- ~ **Company** means Kaze Limited.
- ~ **Buyer or customer** means the person, or company buying the goods and/or services from the Company.
- ~ **Goods and/or services** mean the goods and/or services being purchased by the Buyer from the Company.
- ~ **Contract** means the contract between the Company and the Buyer for the purchase of the goods and/or services.
- ~ **Date of the contract** means where the contract arises from a quotation given by the Company, i) the date of acceptance of the order by the Company; or ii) Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company.
- ~ **Contract price** means the price of goods and/or services as agreed between the Buyer and the Company.
- ~ **Manager** is the company's appointed decision maker.
- ~ **Person** includes a corporation, association, firm, company, partnership or individual.
- ~ **PPSA** means the Personal Property Securities Act 1999.
- ~ **Quotation** shall mean price on offer for a fixed term.

2. Quotation

The Buyer may request a Quotation from the Company setting out the price and quantity of the goods and/or services to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order within an acceptable timeframe.

3. Acceptance

If any instruction is received by the Company from the Buyer for the supply of goods and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are definitive and binding.

4. Delivery & Risk

- 4.1 Delivery of goods shall be deemed completed when the Company gives possession of the goods directly to the Customer or his agent or to a carrier, courier or other bailee for delivery to the Customer.
- 4.2 The Company will make every effort to ensure delivery of goods is on time but will not be liable for any loss or damage including (without limitation) consequential loss arising in any way from any delay in delivery, nor may the Customer cancel any order for late delivery.
- 4.3 Should the Company deliver goods by instalments, each instalment is deemed to be a separate contract on the same terms as the Contract. If the Company fails to deliver, or makes defective delivery of one or more instalments, the Customer is not entitled to cancel the Contract.
- 4.4 The Customer must make any claims for short deliveries or damaged goods within 7 days of delivery.
- 4.5 All risk in and for the goods shall pass to the Customer on delivery of the goods.
- 4.6 The time agreed for delivery shall not be an essential term of the Contract unless the Customer gives written notice to the Company making time of the essence.

5. Terms and Conditions

These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and/or services made by the Buyer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer, and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

6. Price

- 6.1 The Price shall be as indicated on invoices provided by the Company to the Buyer in respect of goods and/ or services supplied; or
- 6.2 The Price shall be the Price of the Company's current Price at the date of delivery of any goods.
- 6.3 Time for payment for the goods and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of any goods.

7. Liability

- 7.1 The Customer shall ensure that goods ordered are fit and suitable for the purpose for which they are required. The Company is under no liability if they are not.
- 7.2 The Company is not liable for:
 - a. Failure to deliver by a specified date;
 - b. An event beyond the Company's control;
 - c. Testing the goods;
 - d. Any negligence, misrepresentation or other act or omission by the Company or its agents; or
 - e. Any loss or loss of profit or damage resulting directly, or indirectly from any of the above.
- 7.3 The Company shall not be liable for consequential or special damages under any circumstances.
- 7.4 Despite anything else, any liability of the Company arising under the Contract will not exceed the value of the replaced goods in relation to which the liability has arisen.
- 7.5 Failure to deliver/install on a specified date shall not entitle the Customer to repudiate the agreement and the Company shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond the Company's control. The Customer shall not be relieved of any obligations to accept or pay for goods by reason of any delay in delivery.

8. Warranties

- 8.1 The Company will use all reasonable care in providing goods and services and will endeavour to provide goods and services in accordance with industry standards. All warranties, conditions, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise and whether express or implied by customary practice, at law or under statute are excluded to the extent legally permitted. If the Customer on-sells the goods in respect of which goods and services have been provided, the Customer will not make any warranty inconsistent with the terms contained herein.
- 8.2 The Customer must give the Company notice of any defect in the goods, or any goods that do not meet industry specifications for which they were supplied, within 7 days of delivery.
- 8.3 The Company's liability under this clause will be limited in the Company's sole and absolute discretion to replacing the goods.
- 8.4 The Company will not be liable for goods which have been tampered with which have not been stored or used in a proper fashion.
- 8.5 The Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective goods.

9. Payment, Late Payment, Default of Payment and Consequences of Default of Payment

- 9.1 The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Company.
- 9.2 Subject to any provision to the contrary in the Contract, payment shall be received on or before the 20th of the month following the date of the Company's invoice to the Buyer, which shall be issued promptly on or after delivery of the goods.
- 9.3 Late payment shall incur interest at the rate of 2% per month calculated on a daily basis. This shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- 9.4 The Company is entitled to pass the collection of any overdue amounts on to a Debt Collection Agency or the like and is also entitled to provide details of the Buyer and the outstanding debt to any credit reporting service.

- 9.5. The Buyer shall pay the Company's legal costs as between solicitor and client (and collection costs) of and incidental to the enforcement or attempted enforcement of the Company's rights, remedies and powers under these terms including (without limitation) there obtaining of an order under Section 167 of the PPSA and any costs incurred by the Company to comply with a demand by the Buyer to register a Financing Change Statement pursuant to Section 162 of the PPSA.
- 9.6. Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of goods and/or services to the Buyer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company exercised its rights under this clause.
- 9.7. In the event that:
- b. any money payable to the Company becomes overdue, or in the Company's opinion the Buyer will be unable to meet its payments as they fall due; or
 - b. the Buyer 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
 - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Company's other remedies at law
 - d. the Company shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

10. PPSA

- 10.1. The Contract constitutes a security interest in the goods together with the proceeds of sale of such goods supplied by the Company to the Buyer for the purposes of the PPSA as security for payment by the Buyer of all amounts due under the Contract, including any future amounts.
- 10.2. The Buyer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Buyer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.
- 10.3. To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 10.4. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.
- 10.5. The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

11. Consumer Guarantees Act 1993

The Buyer agrees and acknowledges that all supplies of goods and services from the Seller to the Buyer are/will be acquired for the Buyer's business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between the Buyer and the Seller.

12. Construction Contracts Act 2002

- 12.1. The parties acknowledge that all provisions of the Construction Contracts Act 2002 shall apply to this contract except where inconsistent with this contract.
- 12.2. The parties further acknowledge that all provisions of the said Act, including those sections listed in section 10 of the said Act, shall apply to this contract even if it is a residential construction contract as that term is defined by the said Act.

13. No Waiver

No delay or failure by the Company to act or insist on any right shall be regarded as a waiver and every right remains enforceable and may be exercised at any time.

14. Privacy Act 1993

The Customer authorises the Company to collect, retain, and use personal information (including disclosure to a third party) about the Customer for the purposes of assessing the Customer's creditworthiness, debt collection and searching the Personal Property Securities Register for the purposes of the security.

15. Dispute resolution

The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

16. Reservation of title

- 16.1. Prior to receiving payment in full for all goods and services, title in any goods supplied by the Company will remain with the Company, even if the goods have been built in or permanently attached.
- 16.2. Until full payment, the Customer shall store goods in a way that clearly identifies them as property of the Company and it shall be the Customer's obligation to maintain insurance in respect of the goods.
- 16.3. If the Customer fails to pay on the due date, or is in breach of these terms, the Customer authorises the Company to enter any premises to recover goods supplied, or to which the Company holds title, and to hold those goods pursuant to this clause 16.
- 16.4. The Customer indemnifies the Company for any losses or costs incurred in recovering such goods. In particular (but without limitation) the Customer is responsible for any damage caused in recovering goods (including any damage caused in recovering goods that have been built in or permanently attached). If the premises of a third party, the Company will enter and receive the goods as the Customer's agent. The Company will be entitled to sell any goods held by the Company and apply the proceeds towards amounts owed by the Customer if the Customer has failed to pay any amount due within 14 days of a written demand and within 60 days of an amount becoming due (whether demanded or not).
- 16.5. This clause 16 is intended to protect the Company in the event of default, insolvency, liquidation, or receivership of the Customer.

17. Miscellaneous

- 17.1. The Company may change these terms by notice in writing to the Customer at any time.
- 17.2. These terms prevail over the terms of any purchase order or any terms or contract submitted by the Customer.
- 17.3. Where any provision of these terms is rendered void, unenforceable or otherwise ineffective by operation of law that shall not affect the enforceability or effectiveness of any other provision of these terms.
- 17.4. Headings do not affect the interpretation of these terms.