

BUILDING CONNEXION LIMITED CREDIT APPLICATION

To be completed by applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf.



Building Connexion Limited, trading as:

Takaka ITM

Motueka ITM

Nelson ITM

Havelock ITM

ITM Frames & Truss & Joinery

Date: _____ Ref No. _____

TRADE NAME: _____

Full Legal Name: (individual or Company) _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ Postcode: _____ _____ Postcode: _____

BUSINESS DETAILS

Company Number: _____ Date Established: _____

Contact: _____ Position: _____

Phone: _____ Email: _____

DETAILS OF OWNERS/ PARTNERS/ DIRECTORS

Name: _____ Name: _____

Home Address: _____ Home Address: _____

_____ Postcode: _____ _____ Postcode: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

ALL APPLICANTS TO COMPLETE

Building Supply Requirements (describe the type of products you expect to order from BCL)

Credit Limit Required (the maximum amount you intend to spend each month) Yes No Amount \$ _____

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) which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these Terms & Conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am an individual applicant, Sole Trader, Partnership, Company director or a shareholder (owning at least 20% of the shares) I shall be personally liable for the performance of the Buyer's obligations under this contract.**

SIGNED: _____ SIGNED: _____

Name: _____ Name: _____

ID: _____ ID: _____

DOB: _____ Date: _____ DOB: _____ Date: _____

BUILDING CONNEXION Ltd (BCL) (trading as Takaka ITM, Motueka ITM, Nelson ITM, Havelock ITM, ITM Frames & Trusses & ITM Joinery)

BUILDING CONNEXION LTD TERMS & CONDITIONS OF TRADE

- 1. Parties And Definitions To This Agreement**
- 1.1. "BCL" for the purposes of this agreement, shall mean Building Connexion Limited, (trading as Takaka ITM Building Centre, Motueka ITM Building Centre, Nelson ITM Building Centre, Havelock ITM Building Centre, Greymouth ITM Building Centre, ITM Frames & Trusses and ITM Joinery), any person or entity acting for or on behalf of Building Connexion Limited or with the permission or authority of Building Connexion Limited.
- 1.2. "Customer" shall mean the Customer, any person or entity acting for or on behalf of the Customer or with the permission or authority of the Customer as detailed on any quotation, estimate, work authority, notation or form as provided by BCL to the Customer.
- 1.3. "Guarantor" shall mean any person (or persons), or entity, who agrees to be held liable for the debts incurred by the Customer in the course of business between the Customer and BCL on a principal debtor basis.
- 1.4. "Services" shall mean all services supplied by BCL to the Customer and includes any recommendations or consultancy advice.
- 1.5. "Price" shall mean the price payable for the goods and/or service as agreed between BCL and the Customer in accordance with clause 3 of this contract.
- 2. Goods And Services**
- 2.1. The Goods and Services provided shall be described on our invoices, quotation, and/or work authorisation, or any other such form as provided by BCL (Building Connexion Limited) to the Customer.
- 3. Price And Payment**
- 3.1. The price shall be at BCL's sole discretion, one or more of the following:
 - (a) The price as quoted to the customer or as per BCL current pricing schedule as at the time of the delivery of the order.
 - (b) The price may be increased by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of BCL's acceptance of the Customer's order and the date of delivery.
 - (c) BCL's price as specified on BCL's current price list and/or hourly rate as when the goods and/or service is provided.
 - (d) Alterations to any price list shall be effective from the date specified by BCL at the time of giving notice to the Customer.
- 3.2. Any change or variation to the specified work, design, plan or service provided, will be charged on the same rates as per BCL's quoted price. Charges for the variation to the quoted work will be invoiced as a variation to the quotation or agreed work and shall be payable immediately on the completion of the work.
- 4. Payment Terms**
- 4.1. Payment shall be at BCL's sole discretion one or more of the following:
- 4.2. At BCL's sole discretion a 50% deposit shall be payable by the Customer on the placement of any order for Goods or Services unless otherwise agreed between BCL and the Customer.
- 4.3. Payment to approved customers shall be made by instalments in accordance with BCL's payment schedule.
- 4.4. BCL shall provide the Customer with an invoice and monthly statement. These invoices are due for payment by the 20th of the month following invoice date.
- 4.5. Payments will be made as agreed between BCL and the Customer. If no payment arrangement is made or payment terms agreed then payment shall be due as stated on the Invoice in cash, cheque, or by, or by direct credit to BCL's nominated account.
- 4.6. Payment shall not be deemed to have been received unless the payment is made in cash or cleared funds are deposited in BCL's nominated account. Any other form of payment will not be accepted as paid until the transaction is deemed to be honoured.
- 4.7. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.
- 4.8. BCL may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, BCL reserves the right to refuse to supply Goods to the Buyer.
- 5. Acceptance Of Terms Of Trade**
- 5.1. Any engagement of BCL's Services including the supply of goods or Services to the Customer shall constitute acceptance of the Terms and Conditions of Trade of BCL by the Customer. Should more than one Customer enter into this agreement the Customers shall be jointly and severally liable for payment in full of the Price.
- 5.2. The Customer must be either the rightful legal Customer or have the full authority of the legal Customer of the Property or Land to enter into a contract or provide instructions to BCL to undertake work or provide goods or services.
- 5.3. The Terms and conditions of this agreement can only be amended with the written consent of BCL and shall be binding on the Customer.
- 5.4. In the event that the Customer proposes any change to the structure of the Customers business, a change in Shareholding, Name, Directors, Premises, postal address, registered office or Sale of the business the Customer shall give no less than fourteen one (14) days written notice of the proposed change or changes. If any loss is incurred by BCL the Customer shall be liable for any loss suffered by BCL due to the Customer not complying with this provision.
- 6. Title to Goods**
- 6.1. Ownership and Title of any goods supplied by BCL to the Customer shall not take effect until:
 - (a) The Customer has paid BCL all invoiced amounts owing for the Goods and fulfilled all obligations to BCL in relation to this agreements.
 - (b) Any form of payment made by the Customer to BCL other than cash shall not be deemed to be payment until that form of payment has been cleared in accordance with clause 4.7 and until then BCL's rights and Ownership in relation to the Goods shall continue. It is also agreed that:
 - (c) Once an order for Goods or provision of Services is placed, no order may be withdrawn, revoked or cancelled without BCL's written consent.
 - (d) If any part of the goods shall become incorporated into land so as to lose its separate identity then the title of that proportion of the goods so integrated equal in value to the price owed to BCL shall be reserved and vested in BCL until all money the Customer owes to BCL has been paid in full.
- 6.2. While ownership of the Goods remains with BCL:
 - (a) The Buyer will store them separately and clearly identify them as BCL's goods.
 - (b) BCL authorises the Buyer in the ordinary course of its business (but not otherwise) to use the Goods or sell them for full consideration. This authority will be deemed to be revoked from the time that an event of default occurs, or BCL notifies the Buyer in writing that this authority is revoked.
 - (c) BCL or its agent may enter (as the Buyer's agent) the premises where the Goods are situated and remove them, without being responsible for any damage caused thereby. BCL may resell any of the Goods and apply the proceeds of sale in reduction of the Buyer's Indebtedness.
 - (d) The Buyer must advise BCL immediately of any Event of Default or any action by third parties (including any creditors) affecting BCL's interest in the Goods.
- 6.3. BCL may apply any payments received from or on behalf of the Buyer in reduction of the Buyer's Indebtedness as BCL thinks fit.
- 6.4. If the Buyer resells or uses any Goods before ownership of them has passed to the Buyer, the proceeds of such sale or use shall be received and held by the Buyer (in whatever form) in trust for both the Buyer and BCL. The interest of BCL as beneficiary under that Trust shall be the portion of the proceeds of sale or other dealing in respect of the Goods which does not exceed the Buyer's Indebtedness to BCL.
- 6.5. BCL may bring an action for the price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- 7. Indemnity from Claims**
- The Customer warrants that no instruction, Plan, Design or drawing provided to BCL will be misleading, infringe or result in the infringement of any copyright and/or any intellectual property right of any person, and/or result in the breach of any law, statute, regulation or ordinance.
- 8. Defects**
- 8.1. The Customer shall inspect the Goods and Services provided by BCL and shall within fourteen (14) days of delivery (time being of the essence) notify BCL of any alleged defect, damage or failure to comply with the description or quote. The Customer shall afford BCL an opportunity to inspect the goods or services provided within a reasonable time following completion of the service provided or delivery of goods if the Customer believes the Goods or Services to be defective in any way. If the Customer shall fail to comply with these provisions the completed works shall be presumed to be free from any defect. For defective Works, BCL's liability is limited to undertaking remedial work on the agreed fault or repair or replacement of any faulty product.
- 9. Damages**
- 9.1. BCL shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of BCL.
- 10. Compliance with Laws**
- 10.1. The Customer and BCL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 10.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works unless otherwise agreed in writing with BCL.
- 10.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11. Insurance**
- 11.1. BCL shall maintain public liability insurance of at least \$2,000,000 indemnifying the Owner against claims arising from the operations of BCL or subcontractor in relation to the works.
- 12. Customers Disclaimer**
- 12.1. The Customer hereby disclaims any right to rescind, or cancel any contract with BCL or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by BCL and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.
- 13. Intellectual Property**
- 13.1. The Customer warrants that all designs or instructions to BCL will not cause BCL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify BCL against any action taken by a third party against BCL in respect of any such infringement.
- 14. Personal Property Securities Act 1999 ("PPSA")**
- Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by BCL to the Customer (if any) and all Goods that will be supplied in the future by BCL to the Customer.The Customer undertakes to:
 - (c) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BCL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (d) Indemnify, and upon demand reimburse, BCL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (e) Not register a financing change statement or a change demand without the prior written consent of BCL; and
 - (f) Immediately advise BCL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.1. BCL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by BCL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by BCL under clauses 15. to 15.1.
- 15. Warranty**
- 15.1. For Goods not supplied by BCL, the warranty shall be the current warranty provided by the manufacturer of the Goods. BCL shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the Goods.
- 16. Default and Consequences of Non Payment**
- 16.1. If the Customer defaults in payment of any invoice when due, the Customer shall pay all costs and disbursements incurred by BCL in pursuing the debt including legal costs on a solicitor and own Customer basis and BCL's collection agency costs. Disbursements incurred by BCL in pursuing the debt including legal costs on a solicitor and own Customer basis and BCL's collection agency costs.
- 16.2. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of 2% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.
- 16.3. BCL at its discretion may suspend or terminate the supply of goods and/or services should the Customer, at any time be in breach of any obligation to BCL (including those relating to payment). BCL will not be liable for any loss or damages the Customer has deemed to have suffered because BCL has exercised his rights under this clause.
- 16.4. If any account remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.
- 16.5. Without prejudice to BCL other remedies at law, BCL shall be entitled to cancel all or any part of any supply agreement with the Customer which remains unfulfilled and all amounts owing to BCL shall, whether or not due for payment, become immediately payable in the event that:
 - (e) any money payable to BCL becomes overdue of payment, or in BCL's opinion the Customer will be unable to meet his payments as they become due; or
 - (f) the Customer 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
 - (g) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 17. Right of Cancellation**
- 17.1. BCL may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials products or goods or Service at any time before the materials, products or goods and alike are delivered by giving written notice to the Customer. On giving notice BCL shall repay to the Customer any sums paid in respect of the Price. BCL shall not be liable for any damages or losses arising from such cancellation.
- 17.2. Should the Customer cancel any contract with BCL the Customer shall be liable for any loss incurred by BCL (including but not limited to loss of profits) up to the time of Cancellation.
- 18. Security Agreement**
- 18.1. Despite anything to the contrary contained in these Terms and Conditions or any other rights which BCL may have:
 - (e) Where the Customer and/or the Guarantor (if any) is the Owner of land, realty, asset or property capable of being charged, the Customer and/or Customers Guarantor agree to mortgage and/or charge all or any of their joint and/or several interest in the said land, realty, asset or property to BCL or BCL's nominee to secure all amounts and other monetary obligations due and payable under these terms and conditions.
 - (f) The Customer and/or the Guarantor acknowledge and agree that
 - (g) BCL (or BCL's nominee) shall be entitled to
 - (h) lodge where appropriate a caveat over the said land, realty asset or property.
- (i) Once all payments and other monetary obligations payable to BCL hereunder have been met the caveat shall be removed.
- (j) The Customer and/or Guarantor shall indemnify BCL against all BCL's costs, any disbursements and any legal costs incurred on a solicitor Customer own basis in the event BCL elect to proceed in any manner in accordance with this clause and/or its sub-clauses.
- (k) The Customer and/or the Guarantor (if any) agree to irrevocably appoint BCL's nominated attorney as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.
- 18.2. In consideration of BCL performing its obligations under this Contract, the Buyer covenants to execute and provide forthwith upon demand in favour of BCL a valid mortgage in the most current Auckland District Law Society form, prepared at the cost of the Buyer, and a Client Authority and Instruction Form for an electronic transaction (in the current form as approved by the New Zealand Law Society (NZLS) and Registrar-General of Land) to enable the registration of a mortgage by e-dealing on the Landline system at Land Information New Zealand (LINZ) over the Property to secure performance of any obligations owed by the Buyer to BCL under this Contract.
- 19. Privacy Act 1993**
- 19.1. The Customer and the Guarantor/s (if separate to the Customer) authorises BCL to: collect, use and retain any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and disclose information about the Customer, whether collected by BCL from the Customer directly or obtained by BCL from any other party, 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 Customer.
- 19.2. Where the Customer and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3. The Customer and/or Guarantors shall have the right to request BCL for a copy of the information about the Customer and/or Guarantors retained by BCL and the right to request BCL to correct any incorrect information about the Customer and/or Guarantors held by BCL.
- 20. The Construction Contracts Act 2002**
- 20.1. The Customer hereby expressly acknowledges that:
 - (e) BCL has the right to suspend work within five (5) working days of written notice of his intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to BCL by a particular date; and
 - (iv) BCL has given written notice to the Customer of his intention to suspend the carrying out of construction work under the construction contract.
 - (f) If BCL suspends work, he:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) Keeps his 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.
 - (g) If BCL exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to BCL under the Contractual Remedies Act 1979; or
- 20.2. Enable the customer to exercise any rights that may otherwise have been available to the customer under the Act as a direct consequence of BCL suspending work under this provision.
- 21. Risk**
- 21.1. If BCL retains Ownership of the Goods nonetheless, all risk for the Goods passes to the Customer when the goods are delivered.
- 21.2. If any of the Goods are damaged or destroyed following delivery but prior to Ownership passing to the Customer, BCL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BCL is sufficient evidence of BCL's rights to receive the insurance proceeds without the need for any person dealing with BCL to make further enquiries.
- 22. Delivery**
- 22.1. At BCL's sole discretion delivery of the Goods shall take place when:
- 22.2. Delivery of the Goods from a supplier to BCL or a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 22.3. Delivery of the Goods from BCL to the Customer, at the Customers nominated address or nominated third party is deemed to be delivery to the Customer for the purposes of this agreement.
- 22.4. The failure of BCL to deliver shall not entitle either party to treat this contract as repudiated.
- 22.5. BCL shall not be liable for any loss or damage whatsoever due to failure by BCL to deliver the Goods (of any of them) promptly or at all, where due to circumstances beyond the control of BCL.
- 23. Dispute Resolution**
- 23.1. All disputes and differences between the Customer and BCL touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996
- 24. General**
- 24.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the existence, validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.
- 24.2. 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 Nelson New Zealand or as otherwise directed by the Court.
- 24.3. BCL shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by BCL of these terms and conditions.
- 24.4. In the event of any breach of this contract by BCL the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to BCL by the Customer in Part or Full whichever is the lesser amount.
- 24.5. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by BCL.
- 24.6. BCL may license or sub-contract all or any part of his rights and obligations without the Customer's consent.
- 24.7. BCL reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which BCL notifies the Customer of such change.
- 24.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 24.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party. The failure by BCL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect BCL's right to subsequently enforce that provision.