

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Customer Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> 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 Incorpor. <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="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> 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="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:		
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> 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 Westpeak New Zealand 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 (CUSTOMER): _____ **SIGNED (WESTPEAK NEW ZEALAND):** _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ Date: _____

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Westpeak New Zealand and its successors and assigns ("Westpeak New Zealand") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

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

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

- GUARANTEE** the due and punctual payment to Westpeak New Zealand of all monies which are now owing to Westpeak New Zealand by the Customer and all further sums of money from time to time owing to Westpeak New Zealand by the Customer in respect of goods and services supplied or to be supplied by Westpeak New Zealand to the Customer or any other liability of the Customer to Westpeak New Zealand, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Westpeak New Zealand, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to Westpeak New Zealand the Guarantor will immediately on demand pay the relevant amount to Westpeak New Zealand. In consideration of Westpeak New Zealand agreeing to supply the Goods to the Customer, 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 Westpeak New Zealand 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 Westpeak New Zealand and each director of Westpeak New Zealand 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 Westpeak New Zealand may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA or any other law; or
 - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** Westpeak New Zealand 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, Westpeak New Zealand in connection with:
 - the supply of goods and/or services to the Customer; or
 - the recovery of monies owing to Westpeak New Zealand by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Westpeak New Zealand's nominees' costs of collection and legal costs; or
 - monies paid by Westpeak New Zealand with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Westpeak New Zealand, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Westpeak New Zealand to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood Westpeak New Zealand's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.
- 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 Westpeak New Zealand by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Westpeak New Zealand's part (whether in respect of the Customer 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 Customer's obligations to Westpeak New Zealand, each Guarantor shall be a principal debtor and liable to Westpeak New Zealand accordingly.
- If any payment received or recovered by Westpeak New Zealand is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Westpeak New Zealand shall each be restored to the position in which they would have been had no such payment been made.
- 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.
- 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 Customer to Westpeak New Zealand.
- I/we irrevocably authorise Westpeak New Zealand to obtain from any person or company any information which Westpeak New Zealand may require for credit reference purposes. I/We further irrevocably authorise Westpeak New Zealand 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 Westpeak New Zealand as a result of this Guarantee and Indemnity being actioned by Westpeak New Zealand.
- The above information is to be used by Westpeak New Zealand for all purposes in connection with Westpeak New Zealand considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<p>GUARANTOR-1 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>	<p>GUARANTOR-2 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>
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- Note:
- If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
 - If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

Westpeak New Zealand – Terms & Conditions of Trade

- 1. Definitions**
- 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.
- 1.2 "Westpeak New Zealand" means Westpeak New Zealand, its successors and assigns.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Westpeak New Zealand to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Westpeak New Zealand to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Account" means the Customer's account with Westpeak New Zealand.
- 1.6 "Order" or "Orders" means the order or orders of the Customer to Westpeak New Zealand to supply the Goods and will be on such forms or in such manner as Westpeak New Zealand require from time to time.
- 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 Customer does not wish to allow Cookies to operate in the background when using Westpeak New Zealand's website, then the Customer 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.
- 1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Westpeak New Zealand and the Customer in accordance with clause 7 below.
- 2. Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
- (a) that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Westpeak New Zealand and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Westpeak New Zealand reserves the right to refuse delivery and/or request an alternative payment method;
 - (c) Westpeak New Zealand may at any time refuse an Order by the Customer or decline to approve any application by the Customer for any reason whatsoever;
 - (d) the existence of an account by the Customer with Westpeak New Zealand does not automatically entitle the Customer to credit in the future; and
 - (e) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Westpeak New Zealand reserves the right to vary the Price with alternative Goods as per clause 7.2 subject to prior confirmation and agreement of both parties. Westpeak New Zealand also reserves the right to halt all Services until such time as Westpeak New Zealand and the Customer agree to such changes. Westpeak New Zealand shall not be liable to the Customer for any loss or damage the Customer suffers due to Westpeak New Zealand exercising its rights under this clause.
- 2.5 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.6 The Customer is strongly recommended to place an order in writing. Orders should clearly state the Customer's particular requirements. Westpeak New Zealand will not be responsible for errors or omissions due to oversight or to misinterpretation of the Customer's verbal instructions.
- 2.7 Quotations are only for work in accordance with the original specifications. If through the Customer's error, or omission, work has to be redone or alterations or additions to specifications are required, then Westpeak New Zealand may make an additional charge. In the event that an order is cancelled or suspended by the Customer, then Westpeak New Zealand may immediately require the Customer to pay for work done to the date of cancellation or suspension.
- 2.8 Westpeak New Zealand reserves the right not to undertake any work which in its opinion is or may be unlawful, offensive, or otherwise inappropriate.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22B of the Contract and Commercial Law Act 2017 or in any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that Westpeak New Zealand shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Westpeak New Zealand in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Westpeak New Zealand in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Westpeak New Zealand; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Authorised Representatives**
- 4.1 The Customer acknowledges that Westpeak New Zealand shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Westpeak New Zealand, that person shall have the full authority of the Customer to order any Services, and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Westpeak New Zealand for all additional costs incurred by Westpeak New Zealand (including Westpeak New Zealand's profit margin) in providing any Services, or variations requested thereto by the Customer's duly authorised representative.
- 5. Change in Control**
- 5.1 The Customer shall give Westpeak New Zealand not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax numbers, change of trustees or business practice). The Customer shall be liable for any loss incurred by Westpeak New Zealand as a result of the Customer's failure to comply with this clause.
- 6. On-Line Ordering**
- 6.1 The Customer acknowledges and agrees that:
- (a) notwithstanding clause 18.1, that all information entered into Workpack Express, or any uniform and PPE management system used by Westpeak New Zealand shall become the property of Westpeak New Zealand and cannot be downloaded, copied or shared with any person/s without written consent of Westpeak New Zealand;
 - (b) Westpeak New Zealand does not guarantee the website's performance;
 - (c) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Westpeak New Zealand;
 - (d) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (e) there are inherent hazards in electronic distribution, and as such Westpeak New Zealand cannot warrant against delays or errors in transmitting data between the Customer and Westpeak New Zealand including orders, and you agree that to the maximum extent permitted by law, Westpeak New Zealand will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (f) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Westpeak New Zealand and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
 - (g) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Westpeak New Zealand shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 6.2 Westpeak New Zealand reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Westpeak New Zealand's business, or violated these terms and conditions.
- 7. Price and Payment**
- 7.1 At Westpeak New Zealand's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Westpeak New Zealand to the Customer; or
 - (b) Westpeak New Zealand's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Westpeak New Zealand reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from Westpeak New Zealand's third party suppliers, then Westpeak New Zealand reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Services; or
 - (e) in the event of increases to Westpeak New Zealand in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Westpeak New Zealand in the cost of taxes, levies, freight and insurance charges, materials and labour, or delays in shipment etc.) which are beyond Westpeak New Zealand's control.
- 7.3 Variations will be charged for on the basis of Westpeak New Zealand's quotation, and will be detailed in writing, and shown as variations on Westpeak New Zealand's invoice. The Customer shall be required to respond to any variation submitted by Westpeak New Zealand within ten (10) working days. Failure to do so will entitle Westpeak New Zealand 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.
- 7.4 At Westpeak New Zealand's sole discretion a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Westpeak New Zealand, which may be:
- (a) on or before Delivery of the Goods;
 - (b) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Westpeak New Zealand.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Westpeak New Zealand.
- 7.7 Westpeak New Zealand may in its discretion allocate any payment received from the Customer towards any invoice that Westpeak New Zealand determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Westpeak New Zealand may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Westpeak New Zealand, payment will be deemed to be allocated in such manner as preserves the maximum value of Westpeak New Zealand's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 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 Westpeak New Zealand nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Westpeak New Zealand an amount equal to any GST Westpeak New Zealand must pay for any supply by Westpeak New Zealand under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 8. Delivery of Goods**
- 8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Westpeak New Zealand's address; or
 - (b) Westpeak New Zealand (or Westpeak New Zealand's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At Westpeak New Zealand's sole discretion the cost of Delivery is either included or is in addition to the Price. Furthermore, the Customer accepts that some orders may be subject also to a handling fee (where applicable), any such fee will be established and advised to the Customer prior to the order being processed.
- 8.3 Westpeak New Zealand may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by Westpeak New Zealand for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Westpeak New Zealand will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Westpeak New Zealand shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Westpeak New Zealand is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Westpeak New Zealand is sufficient evidence of Westpeak New Zealand's rights to receive the insurance proceeds without the need for any person dealing with Westpeak New Zealand to make further enquiries.
- 9.3 If the Customer requests Westpeak New Zealand to leave Goods outside Westpeak New Zealand's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 In the event that the Customer provides Westpeak New Zealand with any information and/or measurements relating to the supply of the Goods, Westpeak New Zealand shall be entitled to rely on the accuracy of any such information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Westpeak New Zealand accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 9.5 Where the Customer has supplied materials for Westpeak New Zealand to complete the Services, the Customer acknowledges and accepts full responsibility for the suitability of purpose, quality, and any faults inherent in the materials. Westpeak New Zealand shall not be responsible for any defects in the Services, or any loss or damage to the materials (or any part thereof), however arising from the use of materials supplied by the Customer.
- 9.6 Whilst the right to use an embroidery programme will remain with the Customer, once paid for, the actual 'programme' or any means of reproducing the programme will remain the sole property of Westpeak New Zealand.
- 9.7 Where the Customer supplies products, adequate quantities shall be supplied to cover spoilage. Products and other materials shall not be counted or checked when received unless requested by the Customer in writing. An additional charge may be made by Westpeak New Zealand in respect of any such counting or checking requested by the Customer.
- 9.8 Westpeak New Zealand is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by Westpeak New Zealand to match virtual colours with physical colours, Westpeak New Zealand will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Customer's computer and/or the final product. In the event that a physical sample is required this will be provided on request by the Customer and will be charged for as an extra including return freight, the additional charge will be detailed separately in the final invoice.
- 9.9 Whilst every care and attention is taken by Westpeak New Zealand to:
- (a) carry out the instructions of the Customer, it is the Customer's responsibility to undertake a final proof reading of the Goods. Westpeak New Zealand shall be under no liability whatsoever for any errors not corrected by the Customer in the final proof reading. Should the Customer's alterations require additional proofs this shall be invoiced as an extra; and
 - (b) deliver Goods of the highest quality, and to ensure that all components (including fabric, inks, and other materials) are purchased from reputable manufacturers, Westpeak New Zealand does not guarantee the manufacture of such items. Where any defect or alleged defect is beyond the ability of Westpeak New Zealand to control quality, Westpeak New Zealand has no liability.
- 9.10 In the case of property and materials left with Westpeak New Zealand without specific instructions, Westpeak New Zealand shall be free to dispose of them at the end of twelve months after Westpeak New Zealand received them and to accept and retain any proceeds gained from such disposal to cover Westpeak New Zealand's costs in holding and handling such items, in accordance with clause 8.3.
- 9.11 The Customer acknowledges and accepts that Goods supplied:
- (a) may exhibit variations of colour and shade that are inherent in fabric dye lots. While every effort will be taken by Westpeak New Zealand to match colour and shade of the Goods, Westpeak New Zealand shall not be liable for any loss, damage or costs, however arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied; and
 - (b) may experience shrinkage which is considered normal practice for these types of Goods and thereby not covered by Westpeak New Zealand as a defect or under warranty. Westpeak New Zealand shall not be liable for any loss or damage in this event, where circumstances are beyond the control of Westpeak New Zealand.
- 9.12 Westpeak New Zealand shall be under no liability whatsoever to the Customer for any variation (beyond the reasonable control of Westpeak New Zealand) in colours between the approved prototype and the finished Goods.
- 9.13 Westpeak New Zealand shall not be held liable for inks wearing off through general wear and tear.
- 10. Specifications**
- 10.1 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in Westpeak New Zealand's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer 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 Westpeak New Zealand.
- 11. Compliance with Laws**
- 11.1 The Customer and Westpeak New Zealand 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.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 12. Title**
- 12.1 Westpeak New Zealand and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Westpeak New Zealand all amounts owing to Westpeak New Zealand; and
 - (b) the Customer has met all of its other obligations to Westpeak New Zealand.
- 12.2 Receipt by Westpeak New Zealand 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.
- 12.3 It is further agreed that title ownership of the Goods passes to the Customer in accordance with clause 12.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Westpeak New Zealand on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Westpeak New Zealand and must pay to Westpeak New Zealand the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Westpeak New Zealand and must pay or deliver the proceeds to Westpeak New Zealand on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Westpeak New Zealand

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- and must sell, dispose of or return the resulting product to Westpeak New Zealand as it so directs;
- (e) the Customer irrevocably authorises Westpeak New Zealand to enter any premises where Westpeak New Zealand believes the Goods are kept and recover possession of the Goods;
- (f) Westpeak New Zealand may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Westpeak New Zealand; and
- (h) Westpeak New Zealand may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 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 that have previously been supplied and that will be supplied in the future by Westpeak New Zealand to the Customer, and the proceeds from such Goods.
- 13.2 The Customer undertakes to:
- (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 Westpeak New Zealand may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) immediately and upon demand reimburse, Westpeak New Zealand 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;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Westpeak New Zealand; and
- (d) immediately advise Westpeak New Zealand 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.
- 13.3 Westpeak New Zealand and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Westpeak New Zealand, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by Westpeak New Zealand under clauses 13.1 to 13.5.
- 13.7 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.
- 14. Security and Charge**
- 14.1 In consideration of Westpeak New Zealand agreeing to supply the Goods, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer 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.
- 14.2 The Customer indemnifies Westpeak New Zealand from and against all Westpeak New Zealand's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Westpeak New Zealand's rights under this clause.
- 14.3 The Customer irrevocably appoints Westpeak New Zealand and each director of Westpeak New Zealand as the Customer'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 Customer's behalf.
- 15. Defects**
- 15.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Westpeak New Zealand of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Westpeak New Zealand an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Westpeak New Zealand has agreed in writing that the Customer is entitled to reject, Westpeak New Zealand's liability is limited to either (at Westpeak New Zealand's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) Westpeak New Zealand has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Customer's cost within fourteen (14) days of the Delivery date; and
- (c) Westpeak New Zealand will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 Westpeak New Zealand 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.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 Westpeak New Zealand warrants that if any defect in any Goods manufactured or Services provided by Westpeak New Zealand becomes apparent and is reported to Westpeak New Zealand within sixty (60) days of the date of Delivery (time being of the essence) then Westpeak New Zealand will either (at Westpeak New Zealand's sole discretion) replace or remedy the defect.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Goods or serviced item; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Westpeak New Zealand; or
- (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Westpeak New Zealand shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without Westpeak New Zealand's consent.
- (c) in respect of all claims Westpeak New Zealand shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Customer's claim.
- 16.3 For Goods not manufactured by Westpeak New Zealand, the warranty shall be the current warranty provided by the manufacturer of the Goods. Westpeak New Zealand 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.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Westpeak New Zealand to the Customer.
- 18. Intellectual Property**
- 18.1 Where Westpeak New Zealand has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents (including, but not limited to, CAD drawings or any designs created and displayed by Westpeak New Zealand via their Workpack Express online portal) shall remain the property of Westpeak New Zealand. Under no circumstances may such designs, drawings and documents be used without the express written approval of Westpeak New Zealand.
- 18.2 The Customer warrants that all designs, specifications or instructions given to Westpeak New Zealand will not cause Westpeak New Zealand to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Westpeak New Zealand against any action taken by a third party against Westpeak New Zealand in respect of any such infringement.
- 18.3 The Customer agrees that Westpeak New Zealand may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Westpeak New Zealand has created for the Customer (including but not limited to, displaying the Goods for demonstration purposes on Westpeak New Zealand's own website).
- 19. Default and Consequences of Default**
- 19.1 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 Westpeak New Zealand's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Westpeak New Zealand any money the Customer shall indemnify Westpeak New Zealand from and against all costs and disbursements incurred by Westpeak New Zealand in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Westpeak New Zealand's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Westpeak New Zealand may have under this Contract, if a Customer has made payment to Westpeak New Zealand, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Westpeak New Zealand under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to Westpeak New Zealand's other remedies at law Westpeak New Zealand shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Westpeak New Zealand shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Westpeak New Zealand becomes overdue, or in Westpeak New Zealand's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Westpeak New Zealand;
- (c) 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies Westpeak New Zealand may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Westpeak New Zealand may suspend or terminate the supply of Goods to the Customer. Westpeak New Zealand will not be liable to the Customer for any loss or damage the Customer suffers because Westpeak New Zealand has exercised its rights under this clause.
- 20.2 Westpeak New Zealand may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Westpeak New Zealand shall repay to the Customer any money paid by the Customer for the Goods. Westpeak New Zealand shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Westpeak New Zealand as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by Westpeak New Zealand is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. Westpeak New Zealand acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Westpeak New Zealand acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Westpeak New Zealand that may result in serious harm to the Customer, Westpeak New Zealand will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Westpeak New Zealand in respect of Cookies where the Customer utilises Westpeak New Zealand's website to make enquiries. Westpeak New Zealand 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Westpeak New Zealand when Westpeak New Zealand sends an email to the Customer, so Westpeak New Zealand may collect and review that information ("collectively Personal Information")
- If the Customer consents to Westpeak New Zealand's use of Cookies on Westpeak New Zealand's website and later wishes to withdraw that consent, the Customer may manage and control Westpeak New Zealand's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer authorises Westpeak New Zealand or Westpeak New Zealand's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (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 Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by Westpeak New Zealand from the Customer directly or obtained by Westpeak New Zealand 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 Customer.
- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.
- 21.5 The Customer shall have the right to request (by e-mail) from Westpeak New Zealand, a copy of the Personal Information about the Customer retained by Westpeak New Zealand and the right to request that Westpeak New Zealand correct any incorrect Personal Information.
- 21.6 Westpeak New Zealand will destroy Personal Information upon the Customer'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 this law.
- 21.7 The Customer can make a privacy complaint by contacting Westpeak New Zealand via e-mail. Westpeak New Zealand 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 22. Dispute Resolution**
- 22.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be 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.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (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;
- (e) if sent by email to the other party's last known email address.
- 23.2 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.
- 24. Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Westpeak New Zealand may have notice of the Trust, the Customer covenants with Westpeak New Zealand as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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;
- (c) the Customer will not without consent in writing of Westpeak New Zealand (Westpeak New Zealand will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 25. General**
- 25.1 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 enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 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 Greymouth Courts of New Zealand.
- 25.3 Subject to the CGA, Westpeak New Zealand shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Westpeak New Zealand of these terms and conditions (alternatively Westpeak New Zealand's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 Westpeak New Zealand may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of Westpeak New Zealand.
- 25.6 Westpeak New Zealand 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 Customer agrees and understands that they have no authority to give any instruction to any of Westpeak New Zealand's sub-contractors without the authority of Westpeak New Zealand.
- 25.7 The Customer agrees that Westpeak New Zealand may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Westpeak New Zealand to provide Goods to the Customer.
- 25.8 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 lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to Westpeak New Zealand.
- 25.9 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.