



Head Office
639 Te Rapa Road
PO Box 10077
HAMILTON
Ph 07 849 4949
Fax 07 849 7027

CONCORD
TERMS OF TRADE and CREDIT APPLICATION FORM

SECTION 1: CUSTOMER ORGANISATION TYPE

Company Partnership Trust Sole Trader Other
(insert details)

Select option that applies

SECTION 2: CUSTOMER DETAILS - GENERAL

Full name of applicant: _____
Trading name: _____
Date of Birth (if sole trader/partner): _____
Prior business name: _____
How long in this business: _____ Order No. Required Y N
Contact address: _____
Postal address: _____
Number years at present address: _____
Telephone number: _____
Facsimile number: _____
Mobile phone number: _____
Home telephone number: _____
Email address: _____
GST number: _____
Business contact person:
- Name: _____
- Postal address: _____
- Telephone number: _____
- Facsimile number: _____
- Mobile phone number: _____
- Email address: _____
Credit references: _____
1 _____
2 _____
3 _____
Bank: _____
Branch: _____
Accountant: _____
Solicitor: _____

SECTION 3: CUSTOMER DETAILS - COMPANY

Incorporation number: _____
Address of registered office: _____
Current directors:

	Name	Address
1	_____	_____
2	_____	_____
3	_____	_____

Current major shareholders:

	Name	Address
1	_____	_____
2	_____	_____
3	_____	_____

SECTION 4: CUSTOMER DETAILS – PARTNERSHIP/TRUST/OTHER

Current Partners/Trustees:

	Date of Birth	Full Legal Name	Address
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____

SECTION 5: FURTHER INFORMATION

Insert any further information here which we should know about that may affect our decision to grant you credit:

SECTION 6: TERMS AND CONDITIONS OF SUPPLY

See attached Terms and Conditions of Supply (**Terms**)

SECTION 7: PERSONAL GUARANTEE

To Concord:

I/We _____ (Guarantor),

in consideration of the Company agreeing to supply goods or services on credit to

_____ (Customer),

DO HEREBY JOINTLY AND SEVERALLY AGREE AND UNDERTAKE WITH YOU AS FOLLOWS:

1. The Guarantor acknowledges that the Company has entered into the Terms with the Customer at the request of the Guarantor.
2. The Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual payment by the Customer of all moneys from time to time payable by the Customer under the Terms and the due, punctual and proper performance and observance by the Customer of all its other obligations under the Terms.
3. The liability of the Customer will constitute a principal obligation of the Guarantor. Such liability will not be relieved or in any way affected in any manner prejudicial to the Company by granting of time, waiver or forbearance to sue by the Company, by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would, but for this provision, have been released from liability.
4. The Guarantor acknowledges that it has read and understood all of the terms and conditions set out in this Credit Application Form and in the Terms.

SECTION 8: CUSTOMER ACCEPTANCE

The Customer confirms and warrants that the above information supplied by the Customer to the Company is accurate and complete in all respects. The Customer agrees at all times to make full and accurate disclosure to the Company of any changes to the above information or of any information and all matters that may materially affect the Company's decision to continue granting credit to the Customer.

The Customer understands and agrees that all orders made and all goods or services supplied by the Company are made and supplied subject to the Terms which are binding on the Customer.

The Customer acknowledges and accepts that the Terms form part of each contract entered into for the supply of goods from the Company to the Customer.

The Customer hereby authorises any person to provide the Company with such information about the Customer which the Company may consider necessary in the course of its business, including credit assessment, debt collecting and direct marketing activities.

The Company may impose a credit limit at its discretion, and alter the credit limit without notice. Where the Customer's credit limit is exceeded the Company reserves the right to refuse to supply goods or services to the Customer.

Where the Customer is other than an individual, the Customer warrants that each person's signature appearing on this Credit Application is duly authorised by the Customer to apply for credit and sign any agreement between the Customer and the Company.

ACCEPTANCE

Signature of Customer or on behalf of the Customer

Full Name

Title/Position

Date

Signature of Guarantor

Full Name

Title/Position

Date

THIS APPLICATION IS BASED ON THE TERMS & CONDITIONS OF SUPPLY ATTACHED

SECTION 9: TERMS AND CONDITIONS OF SUPPLY

The following terms (which may be reviewed and/or amended from time to time by notice to the Customer) (**Terms**) shall be incorporated into each contract between the Customer and Concord (**the Company**) for the supply of goods (**Goods**) or services (**Services**) that arises in accordance with clause **5b** below (**Contract**).

1 Prices

- a The price payable by the Customer for any Goods or Services supplied by the Company pursuant to any Contract shall be the price:
- (i) quoted by the Company; or
 - (ii) where no price has been quoted, the Company's standard price for supplies of those Goods or Services,
- as last notified to the Customer before the date of delivery of such Goods or Performance of such Services (as the case may be), together with any additional amounts payable by the Customer in accordance with clause **1e** (the **Price**) The Customer shall pay the Price for Goods or Services, plus any goods and services tax or other sales tax chargeable on such Goods or Services, in accordance with clause **2**.
- b Any price quoted or estimated by the Company is based on information available to the Company as to the circumstances prevailing at the time of the relevant quotation or estimate and may be adjusted in accordance with actual circumstances becoming apparent to the Company in the fulfilment of any relevant order for Goods and/or Services made by the Customer in accordance with clause **6** (**Order**).
- c Any quotation or estimate provided by the Company as to the time required to perform any Services shall be based on the circumstances known to the Company at the time of such quotation or estimate.
- d Prices are subject to change without notice unless Goods or Services are supplied pursuant to a current quotation.
- e The Customer shall pay, in addition to any quoted price:
- (i) all increases in cost to the Company in respect of labour, materials, specification changes, transport, tax, rates of exchange or otherwise after the date of the relevant quotation;
 - (ii) the cost of any special tests that the Company may agree in its sole discretion to perform on any Goods at the request of the Customer; and
 - (iii) any costs incurred by the Company as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs.

2 Payment

- a Payment of the Price for any Goods or Services is to be completed no later than the 20th day of the month following Delivery (in the case of Goods) or receipt by the Customer of the relevant invoice (in the case of Services), time being strictly of the essence.
- b Payment by the Customer through any form of payment other than cash shall not be deemed to be complete until that form of payment has been honoured.
- c Where the Company considers that the financial condition of the Customer so warrants, it may decline to deliver or install Goods or carry out Services unless the Customer provides satisfactory security for payment of the relevant Price. Should the Customer refuse or fail to comply with this provision the Company may cease deliveries and/or leave the site with any re-establishment or other costs thereby incurred to be borne entirely by the Customer.
- d The Company reserves the right to close, or amend the terms of, any monthly account of the Customer at any time.

3 Late Payment

- a Should the Customer fail to complete payment for any Goods or Services by the due date, the Company may, at its sole discretion (and without affecting any other rights the Company may have against the Customer):
- (i) cancel or suspend any Contract, and may claim for any loss occasioned thereby; and
 - (ii) require the Customer to pay, on demand, default interest on any amount outstanding at the Company's commercial banker's overdraft facility rate plus 3% per annum, accruing on a daily basis on the unpaid portion of the Price from the due date until the date when payment is actually made.

- b The Customer will be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with the Company recovering or attempting to recover any overdue amount.

4 GST

Prices may be quoted inclusive or exclusive of GST and such option shall be specified in writing on each quotation provided by the Company.

5 Acceptance of Quotation

- a Unless otherwise agreed by the Company, any quotation or estimate provided by the Company shall be deemed to be withdrawn unless accepted by the Customer within a period of 30 days from the date of issue, unless otherwise agreed. A quotation or estimate does not give rise to a binding Contract until the Customer has placed an Order on the basis of such quotation or estimate, and such Order has been accepted by the Company in writing.
- b The Customer is bound to pay the full Price for Goods and/or Services ordered by the Customer from the time that the Company accepts the relevant Order. Each accepted Order shall constitute a separate Contract.

6 Orders

Orders must be placed on the form provided for that purpose by the Company, on its website or otherwise (**Order Form**) and all details required on the Order Form are completed in full by the Customer. The Company reserves the right to reject any Order in its sole discretion. Once accepted by the Company, an Order and the relevant Order Form shall form part of the Contract between the Customer and the Company.

7 Queries/Disputes

The Company is not bound to consider, or respond in any way to, any job or account query which is raised later than the date falling 1 month after the date of the invoice relating to the Goods or Services to which such query relates.

8 Delivery

- a The Company will deliver or arrange for the delivery of any Goods ordered by the Customer to the address supplied by the Customer as part of the relevant Order or to such other address as is subsequently agreed in writing between the Company and the Customer if requested (**Customer's Nominated Address**).
- b Delivery of Goods to the Customer is deemed to be completed where such Goods are delivered to the Customer's Nominated Address or, where the Company arranges for delivery by courier, upon loading such Goods onto the courier (**Delivery**).
- c Unless otherwise agreed in writing, the Customer will pay all costs of Delivery.
- d The Customer must notify the Company (and the Company's nominated carrier) immediately if, upon Delivery pursuant to any Order, any Goods forming part of that Order are missing or damaged.
- e Any delivery times notified by the Company to the Customer are estimates only. The Company is not liable for any loss or damage arising in any way from delay in Delivery and a delay in Delivery will not entitle the Customer to cancel any Order or Contract. If any delays occur which are, in the opinion of the Company, beyond the Company's control, the Company shall be entitled to cancel the relevant Order and Contract with the Customer without liability, or postpone Delivery in which event the Customer shall accept such postponed Delivery.
- f The Company reserves the right to cancel delivery of any Goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- g If the Customer fails or refuses to take delivery of any Goods, such delivery will be deemed to have been completed when the Company was ready and willing to deliver such Goods.

9 Plans and Specifications

- a The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer in connection with any Order.
- b Should the Customer require any changes to any measurements or quantities specified in an estimate or quotation provided by the

Company, the Customer shall request such changes in writing, before placing an Order based on that estimate or quotation (as the case may be).

10 Risk

- a Risk in Goods shall pass to the Customer immediately on dispatch of such Goods from the Company's premises.
- b Goods shall be forwarded uninsured, unless the Company expressly agrees otherwise in writing, and the Customer shall accordingly be responsible for insurance of all Goods in transit from the time of dispatch from the Company's premises.
- c If the Company agrees to arrange transit, freight or insurance in relation to any Goods, then such arrangements shall be made by the Company as agent for the Customer, at the Customer's liability and cost in all things and without liability or cost to the Company.
- d If the Customer sells any Goods before the Price of such Goods has been paid in full to the Company, the Customer shall immediately apply the proceeds of such sale or sales towards completing such payment.

11 Security Interest

- a The Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of the Company for the performance of the Customer's obligation to make payment to the Company of all monies owing by the Customer to the Company for any reason from time to time (**Security Interest**).
- b The Customer acknowledges that the Company may, at the Company's cost, register its Security Interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under the Personal Property Securities Act 1999 (**PPSA**).
- c The Customer shall do all things and provide all information as the Company may require for the purpose of securing to the Company the Goods and the performance of all of the Customer's obligations under these Terms, and for the purpose of ensuring that the Company has a perfected first ranking Security Interest in the Goods and any proceeds.
- d The Customer shall not change its name or other details without first notifying the Company in writing at least 14 days before such change takes effect.
- e The Customer:
 - (i) agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these Terms or the Security Interest under these Terms;
 - (ii) waives all of the Customer's rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession) and 132 (redemption of collateral) of the PPSA; and
 - (iii) waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest under these Terms.
- f The terms accession, financing statement, personal property, verification statement and security interest have the meanings given to them under the PPSA.
- g The Customer will:
 - (i) maintain and keep the Goods in good working order and condition and protected against theft, loss or damage; and
 - (ii) permit the Company at all reasonable times by its agents, employees and officers to enter upon any land or premises owned or occupied by the Customer to view and inspect the Goods.
- h The Customer will not:
 - (i) permit to subsist any other security interest in relation to the Goods; or
 - (ii) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

12 Security Interest where goods become Accessions etc

The Company's interest in the goods continues if the goods are processed, included or dealt with in any way causing them to become accessions,

processed or commingled goods (as defined in the PPSA). The security interest in the original goods will continue in the whole in which they are included and the Customer agrees that it will not grant to any other person a security interest in either the goods or in the whole.

13 Privacy

- a In compliance with the Privacy Act 1993, the Customer authorises the Company to obtain information about the Customer from the Customer or any third party in the course of, but not limited to, the Company's credit enquiries.
- b The Customer further authorises the Company to furnish to any third party any information held by the Company about the Customer relating to the Customer's credit worthiness, the details of any credit application made by the Customer to the Company and the details of any subsequent dealings that the Customer may have with the Company as a result of any credit application being actioned by the Company, and the Company may give any such information to any other person for credit assessment and debt collection purposes.
- c The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use of the Company or related company in the course of its business, including direct marketing activities.
- d The Customer (if an individual) shall be entitled to access and request the correction of any of his or her information held by the Company.

14 Defects

- a The Customer shall give the Company written notice of any defect in material and/or workmanship of any Goods or Services within 14 days from the date of Delivery (in the case of Goods) or performance (in the case of Services) and, in the absence of any such notice, shall be deemed to have accepted such Goods or Services as being free of defects. Where such notice relates to defective Goods, such Goods must be delivered to the Company at the Customer's expense together with such notice.
- b Where the Customer notifies the Company as to a defect in Goods or Services in accordance with clause 14a the Company shall, in its sole discretion and within 30 days of receipt of such notice, either:
 - (i) issue a credit note to the Customer in an amount equal to the Price of the defective Goods or Services;
 - (ii) in the case of Goods, repair or replace the defective Goods in question at its own cost and expense; or
 - (iii) in the case of Goods, where the Company finds in its sole discretion that such Goods are not defective the Company shall return such Goods to the Customer at the Customer's cost.
- c Notwithstanding the provisions of clauses 14a and 14b, the Company shall not be obliged to take any action:
 - (i) during any period that the Customer is in default in relation to any outstanding indebtedness to the Company;
 - (ii) where the defect has arisen other than under use and service actually specified or, if none specified, then under normal use and service;
 - (iii) in respect of any parts or components not actually manufactured by the Company; or
 - (iv) in respect of any defect arising due to wear and tear, accident, negligence, or misuse.
 - (v)

15 Warranty, Indemnity & Limitation of Liability

- a The Company warrants that all Goods sold to the Customer will comply in all material respects with the relevant specifications for the Goods notified by the Company to the Customer in writing from time to time and will be free from faulty material or workmanship. Except as provided in this clause 15a, the Company gives no warranty or undertaking and makes no representation regarding the Goods.
- b The Customer shall at all times indemnify and hold harmless and defend the Company and its employees, officers, agents and contractors against any claims by third parties and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them where caused by:
 - (i) a breach of these Terms or of any warranty given by the Customer in relation to the Goods, on the Customer's part or on the part of any person for whom the Customer is responsible; or
 - (ii) any wilful, negligent or unlawful act or omission of the Customer.
- c The Company's only liability to the Customer will be:
 - (i) where the Company becomes unable to supply Goods in respect of which a portion of the Price has already been paid to

the Company, in which case the Company's maximum liability is limited to that portion of the Price of those Goods that the Customer has already paid to the Company; and

- (ii) for any breach of the warranty set out in clause 15a, in which case **the Company's** maximum liability is limited, at the option of **the Company**, to the replacement of any such defective or non-complying Goods or payment of direct costs and losses of the Customer not exceeding the invoice price of the relevant Goods.
- d Except as provided in this clause 15, **the Company** will not be liable to the Customer under these Terms, or in tort (including negligence) or otherwise.
- e The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless that representation, guarantee, warranty or undertaking is supplied by **the Company** in writing. Without any limitation to the generality of the foregoing the Customer shall not do any act or make any omission which gives rise or might give rise to any liability on the part of the Customer and/or **the Company** under the Consumer Guarantees Act (CGA) or the Fair Trading Act 1985. The Customer shall indemnify **the Company** in respect of any liability (including any costs and expenses) incurred as a result of the Customer's breach of this clause 15e.
- f The Customer will ensure that where it resells the Product to another person for business purposes that the terms of such sale provide that the supply of Product is for business purposes and that the provisions of the CGA do not apply to the terms of that sale.
- g The supply of Goods by **the Company** to the Customer under these Terms or otherwise is for business purposes and the provisions of the CGA will not apply to these Terms.
- h If:
- (i) any condition or warranty is implied into these Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
 - (ii) notwithstanding the other provisions of this clause 15, **the Company** has any liability to the Customer,

then to the fullest extent permitted by law the liability of **the Company** for claims by the Customer for breach of the condition or warranty so implied or otherwise will be limited at the option of **the Company** to replacement of such defective or non-compliant Goods or payment of direct costs and losses not exceeding the invoice value of such defective or non-complying Goods.

16 Exclusion of Liability - subsequent loss

Where the Company designs and manufactures equipment based on specifications supplied by the Customer or where the Company undertakes installation or assembly of equipment for the Customer, then subject to any warranty given in writing to the Customer by the Company, the Company shall not be liable for any loss, damage (including spoilage), injury or consequential loss either directly or indirectly caused by a failure of the equipment or defect in installation or assembly. The Customer shall make no claim against the Company and will indemnify save harmless and defend the Company against any claims by third parties for any such loss, damage (including spoilage), injury or consequential loss.

17 Default, Termination and Suspension

- a The Company may suspend or terminate immediately, without incurring any liability, any Contract, and the payment of all amounts owing by the Customer to the Company under these Terms shall immediately become due and payable, if the Customer:
- (i) is in breach of any term of these Terms or any other contract with the Company;
 - (ii) is unable to pay its debts as they fall due (or is deemed to be unable to pay its debts under the Companies Act 1993) or ceases or threatens to cease conducting its business in the normal manner;
 - (iii) enters into, or attempts to enter into, any composition, assignment or other arrangement with, or for the benefit of, its creditors;
 - (iv) becomes, threatens or resolves to become, or is in jeopardy of becoming insolvent;
 - (v) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
 - (vi) being a natural person, dies or becomes bankrupt.
- b Clauses 2, 3, 7-10 (inclusive), 11, 12, 15-17 (inclusive), 19, 22, 24 and 27-29 (inclusive) shall survive the termination or expiration of these Terms.

18 Force Majeure

- a The Company shall not be liable for failure or delay to perform any obligation in whole or in part under these Terms or for any loss or

damage (including indirect or consequential loss or damage) if such delay is due to Force Majeure, provided that nothing in this clause 18 shall excuse payment of any amount owing as it becomes due under any Contract.

- b For the purposes of these Terms, *Force Majeure* means a circumstance beyond the reasonable control of a party which results in that party being unable to observe or perform on time an obligation under these Terms including, without limitation, strikes, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage, revolution, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster.

19 Intellectual Property

- a The Customer acknowledges that neither the Customer nor anyone it is responsible for has, or will acquire, any right, title or interest in the Company's intellectual property (including any intellectual property in any Goods or Services), and no Contract shall transfer any title or ownership in any of the same to the Customer.
- b The Customer warrants that it will take steps to ensure that designs, instructions, marks or copyright information supplied to the Company will, if used, not cause the Company to infringe the patent, registered design, trademark or copyright or any person.

20 No Representations

The Customer warrants that it has or will have used its own skill and judgement in deciding to enter into any Contract, and that the Customer has not relied on any representation made by the Company or its servants or agents which has not been stated expressly in these Terms, or upon any descriptions, illustrations or specifications contained in any document (including catalogues or publicity material produced by the Company).

21 Local Laws

It shall be entirely the responsibility of the Customer to ensure that the Goods and the use thereof comply with the laws, regulations and codes of any particular country or local authority and with the requirements of the Customer.

22 Disclaimer

The Customer hereby disclaims any right to rescind, or cancel any Contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by any servant or agent of the Company and the Customer acknowledges that any acquisition of Goods or Services by the Customer will be completed by the Customer relying solely upon the Customer's own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than any warranty given in relation to Goods by the manufacturer of such Goods, which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

23 Governing Law

All Contracts shall be governed by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear and determine any dispute in relation to a Contract.

24 Allocation of Payments Received

Where, at any time, there is an amount owing by the Customer to the Company under any two or more Contracts, the Company may apply a payment made by the Customer in such manner (including in such order and to any amounts owing to the Company, including under another Contract) as the Company thinks fit and in the Company's sole discretion (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by each Contract also secures the amount owing under each Contract, which shall be construed accordingly.

25 Other Agreements

- a If there is any inconsistency between these Terms and any Order submitted by the Customer (whether in writing, verbally, or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, these Terms prevail unless otherwise agreed in writing by the parties.
- b The only terms and conditions, which will be binding on the Company, are these Terms, the terms of any Order which is accepted by the Company, any other additional terms the Company expressly accepts in writing, and those imposed by law without right of exclusion. In the event of conflicting terms, these Terms shall prevail.

26 Assignment

- a The Customer may not assign all or any of its rights or obligations under any Contract without the prior written consent of the Company.
- b The Company may assign any Contract or any of its rights, duties or obligations under any Contract at any time.

27 Waiver

All waivers shall be effective only in writing by the Company. No failure to exercise and no delay in exercising any right under any Contract shall operate as a waiver of that right nor shall any single or partial exercise of any right preclude any further or other exercise of that right or any other right.

28 Invalid Provision

If any provision of these Terms is declared or adjudged to be invalid, void or unenforceable, such provision shall be severable, shall be deemed to be deleted from these Terms and shall not affect the validity, existence, legality or enforceability of the remaining provisions.

29 Entire Agreement

The provisions of these Terms, together with the relevant Order and Order Form, constitute the entire agreement between the parties with respect to the subject matter of such Order, and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties or their advisers with respect to that subject matter. Any verbal agreement which does not conform with these Terms shall not be binding on the Company unless it has been confirmed by the Company in writing.