

# BDE Ltd.

Business Development Enterprise Limited  
 Unit D, 333 East Tamaki Road,  
 Otara, Auckland  
 e mail: sales@bdeldtd.co.nz

Tel: 09 274 6023 Fax: 09 273 6045  
 Web: www.bdeldtd.co.nz

## APPLICATION FOR CREDIT AND TERMS AND CONDITIONS OF SUPPLY

**DATE:** .....

**SUPPLIER:** Business Development Enterprise Limited ("BDE") (Company Registration No 3920911)

**CUSTOMER Official Name :** ..... Limited (Company Reg.No .....  
 ("Customer/You")

**GUARANTOR/S:** .....

Customer Trading Name:			
Tel:	Mob:	Fax:	Email:
Physical Address:			
Billing Address (if different from above):			

**Trade references:**

Business Name:	Tel	Fax	City

By signing below, you agree to purchase the Goods set out below in Schedule 1 from BDE on the terms and conditions set out in this Agreement.

**Signed** by .....as  
 Customer in the presence of:

\_\_\_\_\_ ★  
 .....  
 (Director)

\_\_\_\_\_ #  
 Witness Signature

\_\_\_\_\_ ★  
 .....  
 (Director)

\_\_\_\_\_ #  
 Witness Name

\_\_\_\_\_ #  
 Witness Occupation

\_\_\_\_\_ #  
 Witness Address

**Guarantee:** In consideration of BDE entering into this Agreement with the Customer at the Guarantor's, the Guarantor/s unconditionally guarantees to BDE the payment of all amounts and the performance of all other obligations owed by the Customer and otherwise covenants with BDE as set out in this Agreement.

**Signed** by .....  
 and ..... as Guarantor/s  
 in the presence of:

\_\_\_\_\_ #  
 .....  
 (Director)

\_\_\_\_\_ #  
 Witness Signature

\_\_\_\_\_ #  
 Witness Name

\_\_\_\_\_ #  
 Witness Occupation

\_\_\_\_\_ #  
 Witness Address

SCHEDULE 1:

COMMENCEMENT DATE: .....

TERM OF THIS AGREEMENT: termination by notice or otherwise in accordance with the terms and conditions of this agreement

PAYMENT: on the 20th of the month following the month the invoice is issued unless otherwise stated on the invoice

TERMS AND CONDITIONS

The following are the terms of the Agreement between the Customer and BDE. These terms shall be incorporated into each order made by the Customer for the supply of Goods, except to the extent expressly varied by signed agreement in writing between them.

1. Definitions and Interpretation

1.1. In this Agreement:

"Agreement" means the agreement between the Customer and BDE for the sale of the Goods and includes the signing page, the First Schedule and the Terms.

"Amount Owning" means the price charged by BDE for the Goods, together with any other sums which BDE is entitled to charge under these Terms that remain unpaid.

"BDE" means Business Development Enterprise Limited, a duly incorporated company with the company number 3920911 including its successors and assigns.

"Claim" includes any claim:

- (a) for damages of any kind, including, but not limited to damages for breach of contract; or
(b) for compensation, demand, remedy, liability or action.

"Contract Term" means the term of this Agreement set out in the First Schedule.

"Credit Reporting Agency" means any credit reporting agency engaged by BDE.

"Customer" means the person/entitled noted as the customer on the cover page of this Agreement, including the person/entity purchasing the Goods from BDE pursuant to these Terms, including that person's successors and permitted assigns.

"Default Interest Rate" means the interest rate charged by BDE's trading bank on any unauthorised overdraft during the period for which the an Event of Default has occurred , plus 2%.

"Delivery" means delivery of the Goods in accordance with clause 4 of these Terms.

An "Event of Default" means an event where:

- (a) the Customer fails to comply with any of these Terms or any other contract with BDE, including failing to pay the Amount Owning on due dates and failing to meet the Minimum Order quantity; or
(b) the Customer commits an act of bankruptcy; or
(c) the Customer enters into any composition or arrangement with its creditors; or
(d) if the Customer is a company:
(i) the Customer does anything which would make it liable to be put into liquidation; or
(ii) a resolution is passed or an application is made for the liquidation of the Customer; or
(iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or
(iv) an administrator is appointed to the Customer;
(v) if anything analogous to or having similar effect to any of the other events arises.

"Force Majeure Event" means is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic and such similar event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.

"Goods" means all goods ordered by the Customer and supplied by BDE under these Terms (as detailed on each invoice issued to the Customer), together with any Services forming part of the supply of Goods.

"Include" and its derivatives shall have no limiting effect.

"Minimum Order" means the minimum quantity of the Goods the Customer is required to order from BDE within a certain period, more particularly specified in the First Schedule.

"Person" includes a corporation, association, firm, company, partnership or individual.

"Personal Property" has the same meaning given in the PPSA.

"PPSA" means the Personal Property Securities Act 1999.

"Proceeds" has the same meaning given in the PPSA.

"Price" means the purchase price of the Goods and any costs payable by the Customer under clauses 2 and 4.1 of these Terms.

"Purchase Money Security Interest" has the same meaning given to it in the PPSA;

"Security Interest" has the same meaning given to it in the PPSA.

"Services" means any services performed by BDE (its employees, agents or subcontractors) as part of supplying the Goods, including the delivery of any Goods.

"Terms" means these terms and conditions of sale.

1.2. References to any legislation includes as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation

1.3. Where the context requires or admits, words importing the singular shall import the plural and vice versa.

1.4. If any of the Terms conflicts with the First Schedule, then the terms of the First Schedule shall prevale.

2. PRICE AND CONTRACT TERM

2.1. Term of the Agreement: This Agreement will commence on the date of execution and continue for the Contract Term unless terminated earlier pursuant to clause 8. Unless otherwise agreed in writing and subject to clause 8, this Agreement shall continue to apply to any orders placed by the Customer and Accepted before the expiry or termination of the Contract Term.

2.2. The Customer acknowledges that in consideration of the Customer entering into this Agreement with BDE, BDE will be entering into third party contracts for the Contract Term including with the manufacturers of the Goods, lease of a new warehouse for the storage of the Goods, in order to comply with the Minimum Order. The Customer agrees and acknowledges that it is an essential term of the Agreement that the Customer meets the Minimum Order quantity during the Contract Term and that its failure to meet the Minimum Order quantity or early termination of this Agreement due to the Customer's breach will cause substantial loss financial and otherwise to BDE. Accordingly, the Customer acknowledges and agrees that its breach of these Terms will entitle BDE to among other things seek damages against the Customer for consequential losses, by way of example, amount payable by BDE for the lease of its warehouse for the balance of the Contract Term, profit loss, amounts and damages (if any) payable to its manufacturers.

2.3. The price may be increased by:

- (a) the amount of any GST and other taxes and duties which may be applicable; and
(b) the amount of any increase in the cost of any items (including any change in currency exchange rates, cost price, manufacturer's

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wholesale price) affecting the cost of supply, production and/or delivery of the Goods prior to the date of Delivery; and

- (c) if the Minimum Order is not met for any given period, subject to clause 8, the amount of any increase in the cost of any items (including any change in currency exchange rates, cost price, manufacturer's wholesale price) affecting the cost of supply, production and/or delivery of the Goods prior to the date of Delivery or loss of profit by BDE at its sole discretion.
- 2.4. The Customer is bound to pay the price when BDE accepts the Customer's order in writing. A quotation does not create a binding contract until the Customer places an order that is then accepted by BDE.
- 2.5. All quotes, estimates and pricing, unless otherwise specified, are valid for 21 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.
- 2.6. BDE reserves the right at any time to alter any price lists and any such alterations to any price list shall be effective from the date specified by BDE and shall apply to all orders accepted by BDE on or after that date.
- 3. PAYMENT**
- 3.1. Payment is due 20<sup>th</sup> of the following month from the date of Delivery unless otherwise agreed by BDE in writing.
- 3.2. BDE may impose a credit limit on the Customer's account and alter the credit limit without notice. Where the credit limit is exceeded, BDE may refuse to supply Goods to the Customer.
- 3.3. The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without BDE's prior written consent.
- 3.4. Any disputes or credit requests by the Customer relating to an invoice issued by BDE for Goods supplied must be received in writing within 21 days from the date of invoice.
- 4. DELIVERY**
- 4.1. Delivery shall be made either:
- (a) at BDE's premises when the Goods are made available for dispatch; or
- (b) such other premises as expressly agreed by the parties in writing.
- If BDE arranges transportation, storage or insurance of the Goods for the Customer, BDE does this as the Customer's agent. Any liability or cost incurred by BDE in providing these services shall form part of the Amount Owing and shall be paid immediately by the Customer to BDE upon a claim being made.
- 4.2. BDE may deliver the Goods by instalments. Failure to fully deliver the Goods shall not entitle the Customer to cancel any orders relating to the Goods.
- 4.3. Any time stated for delivery is an estimate only. BDE is not liable for any delay in delivery.
- 5. RISK AND SECURITY**
- 5.1. Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on Delivery.
- 5.2. As security for all the Customer's obligations under these Terms, the Customer grants to BDE a Security Interest in all the Customer's and the Guarantor's present and after acquired Personal Property, and all the Customer's and Guarantor's present and future rights in relation to any Personal Property including the Goods and the proceeds of the same, as security for payment of the Amount Owing and for the performance from time to time of the Customer's other obligations to BDE under the relevant contract, and such security shall continue until all sums owing by the Customer to BDE pursuant to these Terms have been paid in full.
- 5.3. BDE may allocate all monies received from the Customer in any manner it determines, including in any manner required to preserve any Purchase Money Security Interest under the PPSA in the Goods.
- 5.4. The Customer agrees that, to the extent permissible under the PPSA:
- (a) BDE excludes its obligations to the Customer under the PPSA in respect of any contract for the sale of the Personal Property and the Goods, or the security under such contracts, and
- (b) the Customer waives any right to receive a copy of a verification statement under the PPSA and all of its other rights against BDE.
- 5.5. The Customer agrees that BDE shall have the right, at its absolute discretion:
- (a) to complete and register a mortgage (in the form of the then current Auckland District Law Society all obligations mortgage) over any interest in any property owned or held by the Customer and/or the Guarantor (whether a beneficial or legal interest and as trustee or otherwise); and
- (b) to lodge a caveat against the title to any property in respect of which the Customer and/or the Guarantor owns or holds an interest (whether a beneficial or legal interest and as trustee or otherwise), to secure the Amount Owing and the Customer and/or the Guarantor hereby irrevocably appoints BDE as the attorney of the Customer and/or the Guarantor for the purpose of BDE exercising its rights under this clause whilst any Amount Owing remains outstanding. Where the Customer and/or the Guarantor holds an interest in property as a trustee, then for the purposes of this clause, the Customer and/or the Guarantor warrants that it has the authority of any co-trustee (if any) to grant BDE the rights arising under this clause and such grant is authorised by the relevant trust

- deed.
- 5.6. Notwithstanding clause 5.2 and the provisions of this clause 5, legal and equitable ownership of the Goods remains with BDE and does not pass to the Customer until the Customer pays the Amount Owing and any other monies owing by the Customer to BDE from time to time (whether in relation to any orders made pursuant to these Terms or on any other account whatsoever).
- 5.7. While legal or equitable ownership of the Goods remains with BDE, BDE retains the right to enter the premises or land where the Goods are held or stored and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so.
- 5.8. The security interest created by these Terms is not discharged nor the Customer's and/or the Guarantor's obligations affected by the administration, insolvency, receivership or liquidation of the Customer and/or the Guarantor.
- 6. WARRANTIES AND LIMITATION OF LIABILITY**
- 6.1. The only warranties agreed to by BDE relating to the Goods are those confirmed by BDE in writing.
- 6.2. Except as set out in this clause 6.2, the Customer is not entitled to return the Goods for any reason. The Goods will be deemed accepted unless the Customer notifies BDE in writing of any defects, errors or discrepancies within seven days following Delivery, provided BDE is able to inspect the Goods to confirm the defect, error or discrepancy. For Goods that the Customer is entitled to reject in accordance with this clause, BDE's liability is limited to either (at BDE's discretion) repairing or replacing the Goods, or refunding the price of the Goods, provided that BDE will not be liable for Goods that have been tampered with or modified without the approval of BDE or which have not been stored in a proper manner.
- 6.3. Except for the warranties referred to in clause 6.1, but subject to clause 6.6, to the maximum extent permitted by law BDE expressly excludes all other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability or fitness for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise.
- 6.4. Notwithstanding any other provision of these Terms, other than clause 6.6, under no circumstances shall BDE be liable to the Customer or any other person for any consequential, indirect or special loss, damage or injury of any kind, including any loss of profits or business or any similar claims.
- 6.5. To the maximum extent permitted by law, BDE's total liability (whether in contract, statute, tort or otherwise howsoever arising) for any Claim by the Customer, its agents, employees or subcontractors, or any other person, relating to or arising from the supply of Goods or any quotation or estimate given shall not exceed the price of the Goods to which the Claim relates.
- 6.6. If the Goods are acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 does not apply to the sale of those Goods. Nothing in these Terms is intended to contract out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act.
- 7. INDEMNITY**
- 7.1. The Customer agrees to indemnify BDE from and against any loss, cost or liability suffered or incurred by BDE in respect of the Customer's breach of the Terms and the Agreement.
- 8. DEFAULT**
- 8.1. If the Customer does not pay the Amount Owing by the due date, in addition to BDE's rights in clause 8.2 below:
- (a) BDE may charge, and the Customer must pay, default interest at the Default Interest Rate calculated daily on the Amount Owing from the due date until payment is received in full (both prior to and following any judgment obtained); and
- (b) any rebates or discounts may be cancelled (whether or not previously credited).
- 8.2. If an Event of Default occurs:
- (a) BDE may suspend or terminate this Agreement at its sole discretion; and
- (b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and
- (c) BDE is entitled to recover from the Customer all costs and losses that BDE may incur:

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- (i) in attempting to collect the Amount Owing (including actual legal costs and expenses and costs of collection); and
- (ii) as a consequence of the Customer's breach of this Agreement, including amount payable by BDE for lease of warehouse for the storage of the Goods for the balance of the Contract Term, profit loss, amounts and damages (if any) payable to its manufacturers;

- (iii) and if this Agreement is terminated, any Goods already manufactured or are being manufactured in anticipation of the Minimum Order must be purchased by the Customer and shall form part of the Amount Owing; and
- (iv) any other moneys owing by the Customer to BDE from time to time, whether in relation to any contract or on any other account whatsoever.

**9. PAYMENT VALIDITY**

- 9.1. The Customer acknowledges that BDE continues to supply the Customer on the condition that all payments received by BDE from the Customer are made at a time when the Customer is able to pay its debts as they become due from the Customer's own money.
- 9.2. The Customer further acknowledges that the Customer will not make any payments to BDE with a view to giving BDE a preference over any other creditors of the Customer.

**10. FORCE MAJEURE**

- 10.1. Notwithstanding any other provisions of these Terms, neither BDE nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage if such performance or exercise is prevented or hindered by a Force Majeure Event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these Terms.
- 10.2. The rights and obligations of either party which are affected by a Force Majeure Event shall be suspended during the continuance of the event with either party claiming to be affected by the event giving immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

**11. USE OF INFORMATION**

- 11.1. The Customer understands that BDE may ask for personal information about the Customer so as to use credit reporting services to assess the creditworthiness of the Customer from time to time. The Customer acknowledges that:
  - (a) Credit Reporting Agencies will give BDE information about the Customer for that purpose;
  - (b) BDE may give the Customer's personal information to Credit Reporting Agencies and those agencies may hold that information on their systems and use it to provide credit reporting services;
  - (c) when other users of Credit Reporting Agencies use those agencies' services, the agency may give the information to those users;
  - (d) BDE may use credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using a Credit Reporting Agency's monitoring services to receive updates if any of the information about the Customer changes; and
  - (e) if an Event of Default occurs, information about that Event of Default may be given to a Credit Reporting Agency and the Credit Reporting Agency may give information about the Event of Default to other users of the credit reporting services.

The Customer agrees that BDE may obtain information about the Customer from third parties in the course of BDE's business including credit

- 11.2. assessment, debt collection, any alleged fraud involving the Customer and direct marketing activities, and may use that information for those purposes.

**12. ENTIRE AGREEMENT AND NO RELIANCE**

- 12.1. These Terms (together with any documents expressly referred to in these Terms) contain the entire agreement and understanding between the parties and supersede all prior agreements, arrangements and understandings (both oral and written) between the parties relating to the subject matter of these Terms. No other terms contained in any order or document submitted by the Customer (whether in writing or verbally) or any other arrangement between the parties, shall apply unless otherwise expressly agreed in writing by the parties.
- 12.2. The Customer acknowledges and agrees that the Customer:
  - (a) does not purchase the Goods on the basis of, and does not rely upon, any statement or representation (whether negligent or innocent) or warranty made or given by BDE, except as expressly set out in these Terms or confirmed in writing; and
  - (b) shall be responsible for ensuring that all and any instructions, recommended uses, applications and storage methods are followed for the Goods and any cautions and/or warnings observed.

**13. WAIVER**

- 13.1. If BDE exercises or fails to exercise any right or remedy available to it, this shall not prejudice BDE's rights in exercising that or any other right or remedy unless expressly waived by BDE in writing.

**14. PRODUCT RETURNS**

- 14.1. The Customer acknowledges that if any of the Goods are custom made for the Customer's use, then they cannot be returned for any reason unless otherwise pursuant to clause 6.2.

**15. ASSIGNMENT AND SUBCONTRACTING**

- 15.1. BDE is entitled at any time to assign to any other person all or part of the debt owing by the Customer to BDE. In the event of the sale of BDE's business or a substantial portion thereof BDE shall be entitled to novate these Terms and all contracts created pursuant to them to the purchaser of the BDE's business automatically upon the completion of such sale and the Customer agrees to such novation.
- 15.2. The Customer agrees that BDE may subcontract the performance of the Services to any other person.

**16. REVIEW OF TERMS**

- 16.1. BDE reserves the right to review and amend any of these Terms at any time. Any change will take effect from the date on which BDE notifies the Customer in writing, except where the amended Term is found by any court or administrative body of competent jurisdiction, or otherwise considered by BDE, to be invalid, unenforceable or illegal (whether as between the parties to these Terms or in relation to any third party) in which case the last previously valid, enforceable and legal Term shall continue to apply.

**17. GOVERNING LAW**

- 17.1. This Agreement shall be governed by and interpreted according to the laws of New Zealand and each party irrevocably submits itself to the exclusive jurisdiction of the New Zealand courts in respect of any proceedings arising out of or relating to this Agreement.

**18. GUARANTEE**

- 18.1. In consideration of BDE entering into this Agreement with the Customer at the Guarantor's request, the Guarantor unconditionally guarantees the payment of all amounts and the performance of all the other obligations owed by the Customer under this Agreement and indemnifies BDE against any loss BDE might suffer should the Customer breaches any terms of this Agreement.
- 18.2. The Guarantor further covenants with BDE that:
  - (a) No release delay or other indulgence given by BDE to the Customer or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
  - (b) As between the Guarantor and BDE, the Guarantor may for all purposes be treated as the Customer and BDE shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.
  - (c) The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the Amount Owing.
  - (d) Any assignment of this Agreement by the Customer shall not release the Guarantor from liability;
  - (e) Should there be more than one Guarantor, their liability under this guarantee and indemnity shall be joint and several.

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