

KLC LIMITED APPLICATION FOR CREDIT ACCOUNT

Nature of Organisation	Sole Trader	Partnership	Limited
	Company	Trust	Other
Trade Name			
Legal Name			
Delivery Address			
Postal Address			
Telephone			
Fax			
Email			
Registered Office			
Company Number			
Previous Address <small>(If less than 2 years):</small>			
Details of Partners (if Partnership)		Details of Directors (if Limited Company)	
1. Full Name		1. Full Name	
Home Address		Home Address	
Home Phone		Home Phone	
Mobile Phone		Mobile Phone	
2. Full Name		2. Full Name	
Home Address		Home Address	
Home Phone		Home Phone	
Mobile Phone		Mobile Phone	
Contact Person for Accounts		Contact Person for Accounts	

Bank Name and Branch			
Bank Account Number			
Solicitors Name			
Solicitors Address			
Accountants Name and Address			
Trade References			
List 3 (exclude Credit Cards, Fuel Suppliers, Landlord, Power & Phone)			
1.			
2.			
3.			
I certify that the above information is true and correct and that I am authorized to make this application for credit. In accordance with the Privacy Act (1993) I authorize any person or company to give information as may be required in response to credit enquiries. I have read and understand the General Terms and Conditions of Trade of KLC Limited which form part of and are intended to be read in conjunction with this Credit Application and agree to be bound by those conditions			
Signed		Date	
(Proprietor/ Partner/ Director/ Authorised Signatory) Circle One			
Full Name		Position	
Guarantors Details (if required)			
Full Name		Occupation	
Address			

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of KLC Limited and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to _____ ("the Buyer")

I/WE UNCONDITIONALLY AND IRREVOCABLY

1. **GUARANTEE** the due and punctual payment to the Seller of all moneys which are now owing to the Seller by the Buyer and all further sums of money from time to time owing to the Seller by the Buyer in respect of goods and services supplied or to be supplied by the Seller to the Buyer or any other liability of the Buyer to the Seller, and the due observance and performance by the Buyer of all its obligations contained or implied in any contract with the Seller. If for any reason the Buyer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the contract with the Seller. If for any reason the Buyer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller.
2. **HOLD HARMLESS AND INDEMNIFY** the Seller on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees (as defined here under in paragraph b here at)) incurred by or assessed against the Seller in connection with;
 - a. The supply of goods and/or services to the Buyer; or
 - b. The recovery of moneys owing to the Seller by the Buyer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Sellers nominees costs of collection and legal costs calculated on a solicitor and own clients basis; or
 - c. Moneys paid by the Seller with the Buyer's consent in settlement of a dispute that arises or results from a dispute between the Seller, the Buyer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Buyer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. 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 moneys owing to the Seller by the Buyer and all obligations herein have been fully paid satisfied and performed
4. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Seller's part (whether in respect of the Buyer 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 Buyer's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
5. If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
6. 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 both of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor 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 BUYER TO THE SELLER.

7. The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.
8. I/We irrevocably authorize the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorize the Seller 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 the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- 9.

Guarantor One	
Signed	
Full Name	
Present Address	
Signature of Witness	
Name of Witness	
Occupation	
Present Address	
EXECUTED as a Deed this day of _____ 20__	

Guarantor Two	
Signed	
Full Name	
Present Address	
Signature of Witness	
Name of Witness	
Occupation	
Present Address	
EXECUTED as a Deed this day of _____ 20__	
Note:	
1. If the Buyer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s)	
2. If the Buyer is a club or incorporated society the Guarantor(s) should be the president or secretary or other committee member.	
WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT	



KLC Limited -Terms and Conditions of Trade

1.0 Definitions

1.1 "Seller" shall mean KLC Limited and its successors and assigns.

1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer

1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Buyer on a principal debtor basis.

1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract

2.0 Acceptance

2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or within the written consent of the manager of the Seller

2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3.0 Goods / Services

3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4.0 Price and Payment

4.1 At the Seller's sole discretion the Price shall be either;
a. as indicated on the invoices provided by the Seller to the Buyer in respect of Goods supplied; or

b. the Seller's current Price, at the date of delivery of the Goods, according to the Seller's current price list; or

4.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods

4.3 At the Seller's sole discretion, payment for approved Buyer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices

4.4 At the Seller's sole discretion, for certain approved Buyers payment will be due seven (7) days following the date of invoice.

4.5 Payment will be made by cash on delivery, or by cheque or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.

4.6 The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5.0 Delivery of Goods

5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.

5.2 The cost of carriage and any insurance which the Buyer reasonably directs the Seller to incur, shall be reimbursed by the Buyer (without any offset or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent

5.3 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be greater or less than the quantity purchased provided that;
a. such discrepancy in quantity shall not exceed 5%, and
b. the Price shall be adjusted pro rata to the discrepancy.

5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6.0 Risk

6.1 If the Seller retains title to the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.

6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Buyer, the Seller is entitled, without prejudice to any of its rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7.0 Defects/ Returns

7.1 The Buyer shall inspect the Goods on delivery and shall within two (2) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following the delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is



limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that

- (a) the Buyer has complied with the provisions of clause 7.1;
- (b) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date;
- (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
- (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

7.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

8.0 Warranty

8.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

9.0 Default & Consequences of Default

9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.0% compounding per calendar month and shall accrue at such a rate after as well as before any judgment

9.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominee's costs of collection.

9.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

9.4 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due, or;
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,

then without prejudice to the Seller's other remedies at law:

- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

10.0 Title

10.1 It is the intention of the Seller and agreed by the

Buyer that property in the Goods shall not pass until:

- (a) The Buyer has paid all amounts owing for the particular Goods, and
- (b) The Buyer has met all other obligations of the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

10.2 Receipt by the Seller 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 recognized and until then the Seller's ownership of rights in respect of the Goods shall continue.

10.3 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take Possession of the Goods, without being responsible for any damage thereby caused.

11.0 Personal Property Securities Act 1999

11.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA, and
- (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship.

11.2 The Buyer 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 the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller 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 registering a financing change statement or a change demand without the prior written consent to the Seller;
- (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and
- (e) immediately advise the Seller 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.

11.3 The Seller and the Buyer agree that nothing in sections 14(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

11.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.



11.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Buyer unconditionally ratifies any actions taken by the Seller under clauses 11.1 to 11.5 under and by virtue of the power of attorney given by the Buyer to the Seller.

12.0 Security & Charge

12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

(a) Where the Buyer and/or Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub clauses, the Buyer and/or Guarantor shall indemnify) the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [11, 12.1 (a) to (b)] inclusive hereof the Buyer and/or Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registered or not) including such other terms and conditions as the Seller and/or Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13.0 Consumer Guarantees Act 1993

13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded)

14.0 Cancellation

14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation

15. Privacy Act 1993

15.1 The Buyer and the Guarantor(s) (if separate to the Buyer) authorizes the Seller to:

(a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services; and

(b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 Buyer.

15.2 Where the Buyer is a natural person the authorities under (clause 15.1) are authorities or consents for the purpose of the Privacy Act 1993.

15.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.

16.0 Buyer's Disclaimer

16.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement.

17.0 General

17.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods and Services supplied.

17.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

17.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

17.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.

17.6 The Buyer shall not set off against the Price amounts due from the Seller.

17.7 The Seller may license or sub contract all or any part of its rights and obligations without the Buyer's consent.

17.8 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change