



### TRADE ACCOUNT APPLICATION

The information provided on this form will be used only for the purposes of obtaining credit reference information on the Applicant.

Legal Name of Business ("Applicant"):			
Trading As:			
Postal Address:			
Delivery Address:			
Registered Office Address:			
Nature of Business:			
Website:		After Hours Contact:	
Applicant Contact	Applicant Phone Number	Applicant Email	
Primary Purchaser	Primary Purchaser Phone Number	Primary Purchaser Email	
Accounts Payable Contact	Accounts Payable Phone Number	Accounts Payable Email	
Director / Owner Name:			
Director/Owner Address		Director/Owner Phone Number	
Type of Business: <input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other (please advise):			
Date of Commencement (By current owners):		Date of Formation (If Company):	
GST Registration Number:		Company Registration Number:	
Bank Name & Branch:			
Trade References			
Company Name/Contact Person 1	Phone	Email	Account Since
Company Name/Contact Person 2	Phone	Email	Account Since
Company Name/Contact Person 3	Phone	Email	Account Since
<p>The terms, provisions, and conditions set out in the annexure to these terms of trade shall apply to all purchases from SMITH ELEMENTS &amp; CONTROLS LIMITED ("the Company") by the Applicant ("the Buyer"). The Buyer authorises the Company to:</p> <ul style="list-style-type: none"> <li>• Open an account in the name of the Buyer.</li> <li>• Make such credit enquiries as the Company considers appropriate relating to the Buyer.</li> </ul> <p>The Buyer agrees that:</p> <ul style="list-style-type: none"> <li>• Each director / shareholder / trustee of the Buyer will personally guarantee the obligations of the Buyer to the Company.</li> <li>• It has read and is bound by the terms, conditions and provisions forming part of this application.</li> <li>• The Company may register a security interest under the Personal Property Securities Act over all goods sold by the Company to the Buyer.</li> </ul> <p>AUTHORISED SIGNATURE: _____ DATE: ___/___/___ Estimated Monthly Purchases: \$.....</p> <p>NAME: _____ TITLE: _____</p>			
<p><b>Guarantor(s)</b>          Where the Purchaser is a company or partnership or trust the person(s) referred to as guarantor(s) in this Personal Guarantee and Indemnity declaration forming part of this contract shall personally jointly and severally guarantee the obligations of the Buyer to pay outstanding monies to the Company and to indemnify the Company against non-payment by the Buyer.  <b>Director(s)/Owner(s)/Personal Guarantor(s) to complete:</b></p> <p><b>Name:</b> ..... <b>Signed as personal guarantor(s):</b> ..... <b>Date:</b> ___/___/___</p> <p><b>Name:</b> ..... <b>Signed as personal guarantor(s):</b> ..... <b>Date:</b> ___/___/___</p>			

I/We jointly and severally acknowledge the outstanding debt to the value of the credit limit as a continuing guarantee as declared in the SMITH ELEMENTS AND CONTROLS LIMITED Terms of Trade

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS BY THE BUYER FROM THE COMPANY

- **Application:** Unless otherwise agreed in writing by the Company the following terms (the "Terms") will apply in relation to all goods, products and services provided by the Company to the Buyer (the "Goods"). The Buyer agrees that:
  - (a) The supply of all Goods will be subject to these Terms.
  - (b) The Buyer must take care in understanding these Terms.
  - (c) The Company may amend these Terms at any time by notifying the Buyer and providing by email a copy of the new Terms.
  - (d) Any reference to the Company includes any subsidiary or related company to the Company providing Goods to the Buyer.

- **Electronic Orders / Signing:** The parties agree that this application, any orders for Goods and any acceptance of orders may be carried out electronically and the parties agree that electronic transactions entered into between the Company and the Buyer will be binding on the parties.

- **Price of Goods:** The Company shall provide to the Buyer price lists for Goods or, on request, may provide a quotation and these may be updated by notification from the Company to the Buyer. The Buyer has an obligation to verify the price of Goods payable to the Company prior to confirming an order. Where the Company provides a quotation to the Buyer then within 10 days of notifying that quotation the Buyer must accept that quotation to confirm an order for Goods. The Company may withdraw a quotation prior to acceptance by the Buyer.

Where Goods are required to be imported for delivery any increase in the cost of those Goods or arising from currency fluctuations may be passed on by the Company to the Buyer.

All prices are GST exclusive and GST shall be added to all orders for Goods.

- **Goods to Order:** Where the Buyer has requested Goods be supplied by the Company and the Company has advised the Buyer that such Goods are not stock items and are required to be procured for the Buyer then the order from the Buyer for those goods shall be irrevocable and the Buyer shall be liable to pay the full price for those Goods.

- **Payment Terms:** All payments are due in accordance with the invoice from the Company. Where not otherwise specified payment is due on the 20<sup>th</sup> day of each month following invoice. No deduction, set off, or counterclaims shall be deducted from any payment. The Company may apply payments to such invoices and in such order as determined by the Company.

Invoices not paid on due date shall have interest calculated daily on the outstanding balance at the prime 90 day bill rate plus a margin of 6%.

- **Suspension of Orders:** If an invoice is not paid on due date the Company may suspend deliveries of Goods until all invoices are paid up to date or the Buyer provides security acceptable to the Company.

- **Delivery:** The Company shall arrange delivery of Goods to the premises specified by the Buyer and delivery to those premises shall be deemed delivery of the Goods. The Buyer agrees to be responsible for the validity of the person accepting the Goods on behalf of the Buyer at the time of delivery.

Goods that are finished items but only part of an order may be delivered in instalments at the Company's discretion and in such case each delivery will be regarded as a separate contract and any Goods delivered shall be paid by the Buyer in accordance with the terms of payment.

The Company will make every effort to ensure delivery of Goods and Services on time but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

- **Risk / Ownership:** Risk and the requirement to insure the Goods passes on delivery of the Goods as set out above. Where the Buyer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the cost of the Goods remain unpaid, the Buyer agrees to pay the Company for the full cost of the Goods.

The Buyer agrees that the Company has legal and equitable right to title in all and any Goods supplied that remain unpaid and ownership shall only pass to the Buyer when the contract price is paid. For as long as ownership in the Goods is retained by the Company the Buyer may use the Goods in such a way that they are identifiable as the property of the Company. Any proceeds from the sale of Goods by the Buyer shall be held on trust for the Company.

- **Warranties:** The Company gives no Warranty for Goods manufactured by third parties but will use its best endeavours to assist the Buyer in enforcing any warranty attached to those Goods. If any such Goods are defective the Company

will replace those Goods if returned within 10 working days from the date of delivery, subject to claims as set out below.

Where the Goods are manufactured by the Company those goods shall be guaranteed as to performance for two years from the date of manufacturer. This shall not apply where the Goods have been altered by the Buyer or not used in accordance with the instructions of the Company. The Company shall at its option repair or replace the Goods if returned to the Company within 10 working days of the defect arising or the date when the Buyer should have been aware the Goods were defective.

Where the Buyer has specified the Goods the Company shall not be liable for incorrectly specified and ordered Goods.

- **Claims not Considered:** The Company's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Buyer agrees that the Company will not consider claims from the Buyer in respect of Goods which:

- (a) are not intact and in original condition subject to normal wear and tear;
- (b) have been improperly stored and suffered damage;
- (c) have been used for other than purposes specified in Company publications or packaging;
- (d) have not been maintained according to information in Company publications or packaging;
- (e) have been incorrectly installed or not installed by an appropriately qualified person;
- (f) have been altered from the condition in which they were supplied or repaired by persons other than the Company.

If the Buyer does not comply with the above requirements for warranty and claims the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

- **Goods Incorrectly Ordered:** Where Goods are not correctly ordered by the Buyer the Company may agree to the Goods being returned provided the Goods are in an undamaged saleable condition. A 20% restocking fee will be applied to and deducted from any credits issued. Non stock items that have been specially procured for the Buyer cannot be returned.

- **Security / Personal Property Securities Act:** The Buyer agrees that the retention of title in these Terms creates a Purchase Money Security Interest (having the meaning given to that term in the PPSA) in all present and after acquired Goods (and their proceeds) as security for payment of the purchase price for the Goods all interest and other costs incurred by the Buyer or any receiver (*Secured Indebtedness*) until such amounts are paid in full.

The Buyer undertakes:

- (a) to promptly do all things, execute all documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its security interests (including by registration of a financing statement); and
- (b) not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to the Company's security interest, including (without limitation) the Goods (whether an accession or otherwise), which ranks in priority to the Company's rights as first ranking security holder.

Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee expressed or intended to be security for any Secured Indebtedness or any other obligations owing by the Buyer to the Company or any Related Company.

The Buyer waives its rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA) and agrees that:

- (a) as between the Company and the Buyer, the Buyer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA;
- (b) to the extent permitted by law these Terms exclude any other provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Buyer; and
- (c) where the Company has rights in addition to Part 9 of the PPSA, those rights will continue to apply.

The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and that the Company has not agreed to postpone the time for attachment of the security interest granted to the Company under these Terms.

The Buyer must not:

- (a) change its name, address or contact details without providing to the Company 30 days prior written notice (which may be by email the address of an authorised Company representative).
- (b) give to the Company a written demand, or allow any other person to give the Company a written demand requiring a financing change statement to be registered; or
- (c) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by the Company under the PPSA.

The Buyer will, upon demand, pay all the Company's expenses and legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of the Company's security interest.

• **No Warranties**

- (a) Except as expressly set out in writing by the Company in respect of any Goods, the Company makes no representation, warranty or undertaking (whether express or implied) in relation to any Goods. To the maximum extent permitted by law, all such representations, warranties and undertakings are negated and excluded.
- (b) Where the Buyer is acquiring, or holds itself out as acquiring, any Goods for the purposes of a business in terms of section 43(2) of the Consumer Guarantees Act 1993 (Act), the Buyer will not assert or attempt to assert any rights or claims against the Company under the provision of the Act.

The Buyer acknowledges that it is not relying on the Company's skill or judgement as to the sustainability or otherwise of the Goods for any purpose that was not expressly set out in the Order.

• **Indemnities**

- (a) The Buyer will indemnify the Company at all times against any loss, damage or costs suffered or incurred by the Company as a direct or indirect result of a breach by the Buyer of any of its obligations under these Terms (including without limitation all dishonour fees, debt collection, collection agency costs and legal costs on a solicitor/client basis).
- (b) The Buyer agrees that the Company shall not be held liable, for any direct or consequential loss suffered or that may be suffered by the Buyer as a result of any deficiency, lack of performance, accident, negligence, wilful damage, or any other reason that may be caused by an employee of the Company, or the Company, or any of its representatives, and that the Buyer shall have no entitlement or right to deduct, or offset any claims against amounts due in accordance with this agreement.
- (c) Notwithstanding the above provision the maximum liability of the Company to the Buyer under or in connection with these Terms or related to any Goods will be limited to \$5,000.
- (d) Nothing expressed or implied in these Terms will confer any liability on the Company for any consequential, indirect or special loss, damage, cost or expense suffered or incurred by the Buyer or any other person as a direct or indirect result of:
  - (i) A breach by the Company of its obligations under these Terms; or
  - (ii) The Goods being required for any particular purpose not expressly set out in an order.

• **Personal Guarantee:** In consideration for the Company agreeing to provide goods or services at the request of the Guarantor(s) the person signing as a guarantor for the liability of the Buyer signs these Terms in their personal capacity and jointly and severally personally undertake as principal debtors to the Company, the payment of any and all moneys owed by the Buyer to the Company including all Secured Indebtedness and indemnifies the Company against non-payment by the Buyer. This Personal Guarantee shall be a continuing guarantee and shall remain in full force and effect until all of the Buyer's obligations under any contract or credit facility with the Company or under these Terms are fully satisfied.

• **Force Majeure:** If arising from earthquakes, epidemic, floods, storms, fire and other unforeseen events or Acts of God the Company cannot deliver Goods to the Buyer then the Company shall not be liable for any delays, costs or losses arising from those delays or inability to deliver Goods or if the event is such that Goods are not available the Company may elect to cancel an order or either party can, on giving one week's notice, cancel this agreement.

• **Privacy Act / Use of Information:** The Buyer acknowledges that:

- (a) Any information by the Buyer to the Company may be collected and used by the Company for any purpose connected with the Company's business including (but not limited to) direct marketing, debt collection and credit reporting or assessment.
- (b) The Company is authorised to carry out credit checks in relation to the Buyer, and to provide such information to any external agency or party for credit information and assessment purposes necessary for those purposes, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993;
- (c) The Company and any external agency or party may retain and/or use such information for as long as they see fit; and

- (d) The Buyer has a right of access to and correction of any personal information held by the Company in relation to the Buyer.

Requests for access to any personal information should be sent to the attention of the Privacy Officer, Smith Elements & Controls Limited, ben@smithsnz.co.nz.

• **Default:** If, at any time and for any reason, an Event of Default occurs, then (without prejudice to any other remedies the Company may have):

- (a) The Company may suspend or cancel (in whole or in part) any order created under these Terms or any other contract with the Buyer by written notice to the Buyer;
- (b) The Company may delay delivery of any Goods until the matter is resolved to the Company's satisfaction;
- (c) The Secured Indebtedness will become immediately due and payable;
- (d) Each security interest created under these Terms will become immediately enforceable;
- (e) The Company may at any time appoint in writing one or more Receivers (jointly and/or severally) in respect of any Secured Property who shall be entitled to exercise all rights conferred on the Company under these Terms as well as at law generally and pursuant to the Receiverships Act 1993 and otherwise on such terms considered necessary or expedient by the Company;
- (f) The Company or a Receiver may take possession of the Goods and any other Secured Property (including Goods that have become an accession under the PPSA) and may dispose of them or retain them for the benefit of the Company or any Related Company and for that purpose may, without notice enter directly (or through its agents) on any premises where the Company reasonably believes the Goods are stored, without being liable to any person. In respect of other Secured Property the Company may, in the name of the Buyer or otherwise, at any time do anything and exercise any right which the Buyer could do or exercise in relation to the Secured Property, including the right to take possession of, demand, collect and get in any Secured Property and deal with it in any way whatsoever including but not limited to disposing of Secured Property, cancelling any contracts, borrowing any money, taking any proceedings in the Buyer's name and settling any disputes or proceedings; and
- (g) The Company may suspend all payment credit arrangements offered to the Buyer immediately, without notice, until the Event of Default is remedied to the Company's satisfaction and require future orders to be paid in cash in full prior to Delivery.

The Company does not (and will not be deemed to) undertake any of the Buyer's obligations in respect of the Secured Property by virtue of these Terms.

The Company is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by the Company at any time or any money or property that the Company at any time holds or is entitled to hold.

The remuneration of the Receiver may be fixed by the Company but is payable by the Buyer and forms part of the Secured Indebtedness. To the fullest extent permitted by law, a Receiver will be the agent of the Buyer and the Buyer will be solely responsible for that Receiver's acts and defaults.

The Company may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has thereby ceased, whereupon the Receiver shall immediately cease to act.

The Buyer irrevocably appoints, and ratifies the actions or omissions of, the Company, each Receiver, each nominee of the Company in whose name any Secured Property is registered and each duly authorised officer or attorney of the Company severally, to be its attorney (Attorney) (with full power to appoint substitutes and to sub-delegate) on behalf of the Buyer and in the Buyer's name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which the Attorney may consider necessary or expedient to secure the Company's the full benefit of its rights and intended rights under these Terms and any other contract with the Company to secure payment of the Secured Indebtedness and performance of the Buyer's obligations to the Company and any Related Company and any matters incidental thereto.

A certificate signed by the Company as to an amount due by the Buyer shall be conclusive evidence of such for all purposes, including for any proceedings.

• **Variation to Terms:** The Company may vary these Terms at any time by publishing the varied terms on the Company's website ([www.smithsnz.co.nz](http://www.smithsnz.co.nz)). Goods ordered after the date of the publication of the varied terms will be subject to the variation and the placing of the order shall be deemed to be an acceptance of such varied Terms.

• **Disputes and Arbitration:** In the event of any dispute between the Company and the Buyer arising out of this Contract, the Buyer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.