

IDAS GROUP LTD
ACCOUNT APPLICATION/AGREEMENT AND TERMS OF TRADE

Company/Person Entering Agreement ("the Buyer")

Type of Organisation: Company/Partnership/Trust/Sole Trader/Other (*delete those that do not apply*)

Name of Organisation: _____

Trading Name: _____

Postal Address: _____

Delivery Address: _____

Phone: _____ Facsimile: _____

Registered Office Address: _____

Any prior Business Name: _____

Expected monthly credit: \$ _____

Requested monthly credit limit: \$ _____

Please nominate someone to be the contact person for your Organisation for Warehouse and Administration

Accounts Contact

Full Name: _____

Contact Phone: _____

Mobile Phone: _____

Email Address: _____

Email Invoices: _____

Email Statements: _____

Facsimile: _____

Warehouse/Purchasing Contact

Full Name: _____

Contact Phone: _____

Mobile Phone: _____

Email Address: _____

Email Order Confirmation: Yes No (*please circle one*)

Facsimile: _____

The Buyer hereby requests that Idas Group Limited (“the Vendor”) supply to the Buyer certain goods as shall be agreed by the Vendor and the Buyer from time to time. Where the Vendor agrees to supply such goods then they shall be supplied on the terms and conditions contained in the Schedule to this Supply Agreement. The Buyer accepts such terms and conditions.

Signed by Buyer: _____ **Date:** _____

Signed by Vendor: _____ **Date:** _____

Credit Reference:

- 1. Name of Supplier: _____
Address: _____

Contact Person: _____
Telephone: _____
- 2. Name of Supplier: _____
Address: _____

Contact Person: _____
Telephone: _____

PERSONAL GUARANTEE

Any applicant (if requested to do so) must provide Guarantors acceptable to the Vendor.

1. In consideration of the Vendor agreeing to enter into this Supply Agreement at the request of the Buyer I/We jointly and severally guarantee the payment on demand to the Vendor of all monies owing from time to time by the Buyer to the Vendor ("the debt"); and I/we:-
 - (a) Indemnify the Vendor on demand as a separate obligation against any loss or liability incurred by the Vendor as a consequence of any failure by the Buyer.
 - (b) Acknowledge that this obligation shall be a continuing obligation and be irrevocable.
 - (c) Acknowledge that no granting of credit, extension of time, waiver, indulgence or neglect to sue on the Vendor's part shall impair or limit the liability of the Guarantor.
 - (d) Acknowledge that each Guarantor shall be a principal debtor and liable accordingly.

2. I/We further acknowledge:-
 - (a) The debt includes any legal and other costs and expenses incurred by the Vendor in seeking payment from the Buyer or in enforcing this Guarantee and Indemnity against the Guarantors.
 - (b) The Vendor may, in the event of default in payment by the Buyer and the Guarantor(s) complete and register an all obligation mortgage and/or caveat at the Guarantor's cost over any of my/our property, the address of which is given on this form, to secure moneys owed by the Buyer to the Vendor and for that purpose I/We hereby charge that property with this obligation and I/We irrevocably appoint the Directors of the Vendor severally as my/our Attorneys for the purpose of completing the mortgage and/or caveat.
 - (c) The Vendor may obtain credit reports from credit reporting providers for the purpose of assessing my/our credit worthiness, and may disclose to or discuss with any credit providers or credit reporting agencies any information in the Vendor's possession relating to my/our credit worthiness.

Signed by Guarantor: _____ Date: _____

Full Name: _____ Occupation: _____

Address: _____

Witnessed:
Signed: _____ Date: _____

Full Name: _____ Occupation: _____

Address: _____

SCHEDULE

1. **Supply & Acceptance**
- 1.1 The Vendor shall have an absolute discretion as to whether to supply the Buyer with Goods or not and may cancel this agreement at any time in its absolute discretion, withhold any goods agreed to be supplied and/or require immediate payment of any goods so supplied.
- 1.2 Confirmation of an order following the giving of a quote or receipt of any goods will be deemed to be acceptance by the Buyer of these Terms and Conditions, notwithstanding anything that may be stated to the contrary on the Buyer's order.
2. **Price**
- 2.1 The price of any goods supplied shall be the price as determined from time to time by the Vendor. Prices are subject to change without notice.
- 2.2 If GST or other taxes are payable on goods supplied or on any amount payable the Buyer shall pay such tax.
- 2.3 All prices are exclusive of freight costs, insurance charges and installation and maintenance costs, unless otherwise agreed by the Vendor and the Buyer in writing.
3. **Terms of Payment**
- 3.1 Unless otherwise agreed by the vendor payment is due within 30 days of the issue of an invoice by the Vendor to the Buyer ("the due date").
- 3.2 Payment of all monies will be made without set-off or deduction of any kind unless the Buyer is a Consumer and is entitled to exercise any remedies pursuant to the Consumer Guarantees Act 1993.
4. **Delivery**
- 4.1 The Vendor shall not be liable for any loss or damage to the goods during transportation even though such loss or damage may be caused by the Vendor's negligence or other default PROVIDED THAT this clause shall not prevent a Buyer who is a Consumer from exercising any remedies that Buyer may have under the Consumer Guarantees Act 1993.
- 4.2 Dates given for shipment or delivery are stated in good faith but are not to be treated as a condition of the sale. If delivery of the goods is delayed for any reasons whatsoever, the Vendor shall not be responsible or liable in any way to the Buyer or any other party for loss sustained due to such delay.
- 4.3 The Vendor reserves the right to cancel delivery of the goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- 4.4 Where the Buyer does not take delivery of the goods by the delivery date specified or such later date as the parties agree, the Buyer shall pay reasonable storage costs until such time as the Buyer accepts the goods, such cost to be determined by the Vendor.
- 4.5 No claim for any discrepancy in orders will be admitted unless it is made in writing to the Vendor within 48 hours of delivery.
- 4.6 Delivery by the Vendor to a carrier shall be deemed to be delivery to the Buyer.
- 4.7 The Vendor shall be entitled to cancel or suspend delivery of the goods in the event of any delay or non-performance due directly or indirectly to wars, strikes, lock-outs, delays or defaults or manufacturers or suppliers, act of God, or any other cause (whether similar or dis-similar) beyond the reasonable control of the Vendor. The Buyer shall have no claims whatsoever against the Vendor in consequence of any such cancellation or suspension.
5. **Default**
- 5.1 Any failure on the part of the Buyer to make payment when due shall constitute a breach of these Terms and Conditions for which the Buyer shall be liable to compensate the Vendor by immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until date of payment at a rate equal to 2% per month, such interest to accrue from the date payment was due until payment is made.
- 5.3 If the Buyer is in breach of any of these Terms and Conditions or in breach of any other contract for supply with the Vendor, the Vendor shall be entitled to cancel this and any other contract for supply and seek damages accordingly.
- 5.4 Without prejudice to its other remedies the Vendor shall be entitled to cancel this and any other contract for supply with the Buyer in the following circumstances.
 - 5.4.1 If the Buyer becomes insolvent or is adjudicated bankrupt; or
 - 5.4.2 If a receiver is appointed in respect of the assets of the Buyer; or
 - 5.4.3 If the Buyer no longer carries on business or threatens to cease carrying on business; or
 - 5.4.4 If an arrangement with the Buyer's creditors is made or likely to be made; or
 - 5.4.5 If the ownership of effective control of the Buyer is transferred or the nature of the Buyer's business is materially altered and in that event all monies otherwise payable by the Buyer in respect of goods supplied by the Vendor shall become immediately due and payable.
- 5.5 The Buyer shall pay all costs incurred by the Vendor, including costs on a solicitor-client basis and debt collectors' costs, incurred in the recovery or attempted recovery of outstanding money and the enforcement of these Terms and Conditions.
- 5.6 Payments by the Buyer shall be applied first in reduction of interest, liquidated damages and costs due pursuant to this clause 5, the balance then being in reduction of any amounts due pursuant to clauses 3 or 4.
6. **Ownership and Risk**
- 6.1 Notwithstanding that ownership in the goods may not have passed to the Buyer risk in the goods shall pass to the Buyer when the goods are records in respect of the goods.
- 6.5 If the goods are sold or otherwise disposed of by the Buyer prior to receipt by the Vendor of payment in full, the Buyer will have been deemed to have done so as agent for the Vendor and the proceeds of such sale will be the property of the Vendor. The Buyer will hold the proceeds of such sale on trust, on account for the Vendor, and keep them in a separate fund from its own money.
- 6.6 If any of the goods are mixed or incorporated in other goods (the "mixed goods") before payment is received, the Buyer agrees that the property in the mixed goods shall be and remain with the Vendor until such payment has been made in full. The Buyer shall hold the mixed goods as bailee for the Vendor and will store the mixed goods in such a manner that they are clearly identifiable as the property of the Vendor and will keep separate records in respect of the same. If the Buyer sells the mixed goods it will hold the proceeds of such sale on trust for the Vendor and will account to the Vendor for the value of the goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.
- 6.7 Where the Vendor has reasonable cause to believe:
 - 6.7.1 The Buyer has not strictly complied with these Terms and Conditions in particular, default of payment. Or
 - 6.7.2 The Buyer has or will commit an act of bankruptcy or (being a company) has had a receiver appointed, or is declared insolvent; The Vendor may recover any or all of the goods or the mixed goods and re-sell the goods or mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such goods or mixed goods are reasonably thought to be stored (and the Buyer grants to the Vendor an irrevocable right and authority to so recover, re-enter and re-sell).
- 6.8 In exercising its rights pursuant to this clause, the Vendor shall be entitled to deduct from any sale of goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by the Vendor in enforcing or attempting to enforce its rights pursuant to this clause 6.
7. **Credits**
- 7.1 Credits sought for returned goods are at the Vendor's exclusive discretion and the goods must be:
 - 7.1.1 Returned within seven days of receipt;
 - 7.1.2 Returned free into the Vendor's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Buyer;
 - 7.1.3 In as new condition in the Vendor's original containers, unsoiled and undamaged; and
 - 7.1.4 Accompanied by the number and date of supplying invoice.
- 7.2 Where the Vendor agrees to give a credit for returned goods the Vendor may charge a restocking fee of 15% of the retail price of the goods at the date of the return of the goods.
8. **Supply for Business Purpose**
- 8.1 Where this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where such supply is a supply for business purposes, the Buyer agrees that the goods are supplied to the Buyer for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Buyer.
9. **Warranties and Conditions**
- 9.1 This clause 9 shall apply except where the Buyer is a consumer (as that term is defined in the Consumer Guarantees Act 1993)
- 9.2 All representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) not expressly included in these terms and conditions are hereby expressly excluded.
- 9.3 No action or claim may be brought against the Vendor unless notice of such claim is brought within 30 days of despatch of the goods to the Buyer and the Vendor shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of accrual of any cause of action.
- 9.4 The Buyer undertakes to insert a similar provision to this clause 9 in its terms and conditions of trade with any business or non consumer purchaser it re-supplies with the goods and further undertakes to indemnify the Vendor from any loss or liability incurred as a direct result of its failure to include such a provision.
10. **Limitation of Liability**
- 10.1 The Vendor's liability in any case shall be limited to the purchase price of the goods in respect of which such liability arises. The Vendor shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever arising PROVIDED THAT where the goods are not supplied for business purposes this clause 10.1 shall not prevent a Buyer who is a Consumer under the Consumer Guarantees Act from exercising any remedies that Buyer may have under that Act.
11. **General**
- 11.1 **Severability** - If any of the terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.
- 11.2 **Amendments** - The Vendor may amend these terms and conditions by giving the Buyer at the last known address notice in writing of such amendments.
- 11.3 **Applicable Law** - The parties agree that this contract shall be subject to the laws of New Zealand and subject to the exclusive jurisdiction of the

- delivered to the Buyer or into the custody of the party acting on the Buyer's behalf or to a carrier and the Buyer shall be obliged to insure the goods from the time of delivery to the Buyer.
- 6.2 Notwithstanding anything else, legal and beneficial ownership of any and all goods shall remain with the Vendor until payment in full is made for them and for all other goods supplied by the Vendor to the Buyer. The Buyer hereby charges all the goods supplied by the Vendor from time to time to the Buyer with payment of all monies owing by the Buyer to the Vendor and grants to the Vendor a security interest in such goods.
- 6.3 If payment is dishonoured or not made in whole or in part in respect of any of the goods the Vendor may (without prejudice to any of its other rights) recover and/or resell the goods or any of them and may enter upon the Buyer's premises or any other place where the goods and/or the mixed goods are stored by its servants or agents for that purpose (and the Buyer grants to the Vendor an irrevocable right and authority to so recover, re-enter and re-sell) provided that the Vendor may only recover and resell for its own account sufficient of the goods and/or the mixed goods to satisfy all unpaid liabilities in respect of the goods and the costs of resale. If any excess is recovered by the Vendor, it shall not be liable in damages but shall account for the excess to the Buyer.
- 6.4 Until payment is made in full by the Buyer for the goods, the Buyer holds the goods as bailee for the Vendor and will store the goods in such a manner that they are clearly identifiable as the property of the Vendor and will keep separate
- New Zealand Courts.
- 11.4 **Privacy Act** - The Buyer agrees that the Vendor may obtain credit reports from Credit Reporting Agencies and other credit providers for the purpose of assessing this and any other application you make for commercial credit. The Buyer further agrees the vendor may obtain credit information from Credit Reporting Agencies from time to time for the purpose of reviewing and assessing the Buyer's commercial credit availability. The Vendor may disclose to any Credit Reporting Agencies any information in the Vendor's possession relating to your credit Facility.
- 11.5 **Personal Properties Securities Act** The Buyer waives the Buyer's right to receive copies of any verification statements confirming registration of any financing statement or any financing change statement relating to any security interest (if any) created by or pursuant to this Supply Agreement in any goods supplied from time to time by the Vendor to the Buyer.
- 11.6 **Disputes** - The Buyer shall notify the Seller of any dispute in writing forthwith. Both parties will attempt to resolve the dispute in good faith within 14 days of that notice. Pending resolution of any dispute, the Buyer shall pay that part of the invoice not in dispute in the manner and time set out herein.
- 11.7 **Arbitration** - Any dispute or difference arising as to the interpretation of the contract or the rights or obligations of either party other than the Seller's right of recovery of price or goods shall be referred to arbitration under the Arbitration Act 1996 or any Act passed in amendment thereof or in substitution therefore.