

BAYSAFETY
AND SUPPLIES LIMITED
Credit Account Application

Unit 2, 211 Matakokiri Drive
Tauriko
Tauranga
Mike: 021607169
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Registered Company / Partnership / Sole Trader / Customer Name:

Trading Address / Delivery Address:

Postal Address:

Location and Name of Registered Office:

Contact Name:

Business Phone:

Position:

Email:

Date Incorporated or Partnership Established:

Name of Directors / Partners:

Private Address:

Phone:

A

B

C

BAYSAFETY

AND SUPPLIES LIMITED

Accountant: _____

Phone: _____

Trade Reference - 3 Required

Phone

Account No.

1

2

3

Projected Monthly Trade \$ _____

Director Guarantee Clause Ltd Liability Companies:

In consideration of you supplying goods and services to the above-named company, I / We guarantee payment of their account:

Name of Director (Guarantor):

Signature:

A _____

B _____

C _____

BAYSAFETY

AND SUPPLIES LIMITED

Credit Application Form - cont...

Acceptance of Credit Account Conditions:

I/we hereby apply to have payment of my/our company's purchases on the basis of payment on the 20th of the month following the invoice and I/we have duly read and understood the terms and conditions of supply printed below and agree to those terms and conditions.

Signed _____

Printed Name: _____

Position: _____

Dated: _____

(I am a duly authorized officer of the company detailed above)

Terms and Conditions of Sale

Any goods supplied by the Company (**Bay Safety & Supplies Ltd**) to the Customer will be supplied on these terms and conditions. If the Customer orders goods the Customer will be deemed to have accepted these conditions. The Company is entitled to vary these terms and conditions by way of notice in writing to the Buyer. These terms and conditions and any subsequent Terms and conditions issued by the Company shall apply to all orders for the goods made by the Buyer after the date and time at which these conditions are first delivered or sent by email to, or otherwise brought to the notice of an employee, staff member or representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

Price

1.
 - (a) The price shall be as indicated on invoices provided by the Company to the Buyer in respect of Goods supplied; or
 - (b) The price shall be the price of the Company's current price at the date of the delivery of any goods.
 - (c) Time for payment for the goods shall be of the essence and is due on the 20th of the month following the month in which the goods were invoiced.
 - (d) The buyer agrees that the price shall be determined by the Company and shall take into consideration "one off" costs such as design and production.

Changes

2. The Company reserves the right to modify the content of any goods or part thereof without incurring any obligation to make like changes on goods previously supplied. The Company reserves the right to implement a surcharge for alterations to specifications of goods after the order has been placed.

Payment

3. Default of payment and consequences of default of payment

- (a) All sales are cash sales or direct credit. Payment by visa or Mastercard may be made at the discretion of the company and only within the credit period outlined above. If the sale is not a cash sale, the invoiced price of the goods is to be paid in full on the 20th of the month following the date of the invoice of the goods.
- (b) If payment is not made on the due date the Customer will if requested by the Company pay default interest before judgment on all overdue amounts at the rate of 15% per day (plus GST in respect of the interest). This shall be payable on any monies outstanding under the date payment was due until the date payment is received by the Company but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date. Any fees or expenses incurred in effecting the collection of accounts in default of this condition will be added to the amount owing. Credit card payments may incur a credit card surcharge fee.
The Buyer may not deduct or withhold any amount (whether by way of set-off counterclaim or otherwise) from any money owing to the Company
The Buyer may not withhold any amount as retention except where the Company has agreed in writing that the Customer may withhold an agreed amount.
- (c) Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of goods to the Buyer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the company exercised its rights under this clause.
- (d) In the event that:
 - (i) any money payable to the Company becomes overdue or in the Company's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (ii) 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
 - (iii) 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 Company's other remedies at law, the company shall be entitled to cancel all or any part of any order of the buyer that remains unperformed in addition to and without prejudice to any other remedies and all amount owing to the Company shall, whether or not due for payment, immediately become payable.

Delivery and Risk

4. The Company's delivery records shall be prima facie for proof of delivery of the goods and the quantity and description stated therein. The Company shall not be under any liability whatsoever for the consequences of any delay in completion, delivery or dispatch of the good for any reason. Risk in the goods passes to the Buyer when the goods are loaded for dispatch to the Buyer or when the goods pass into a third-party custody on the Buyer's behalf (whichever occurs first).

Retention of Title

5.
 - (a) Until payment has been received in full by the Company, ownership of the Goods and the property of the Goods remains at all times and in all circumstances with the Company.
 - (b) After delivery but while ownership of the goods remains with the company;
 - (i) The Buyer must ensure that the goods are stored at its place (s) of business and marked in such a manner as to be readily identifiable as the Company's property; and
 - (ii) The Buyer may use, lease at market rates or sell for full value, the goods in the ordinary course of business. However, if the Buyer receives payment from a third party, it agrees to hold such parts of the proceeds as relates to the Goods, separately and in identifiable form, on trust for the Company; and
 - (iii) Except as provided in the above clause, the Buyer must not grant anyone any interest in or charge over the Goods; and
 - (iv) The Buyer must insure the Goods at its cost, naming the Company as loss payee, for full replacement cost against all risk, The Company may apply the proceeds of any insurance payment to reduce the amount that is owing to it.

Security Interest

6. The parties agree that this agreement constitutes a security interest in favour of the Company under the PPSA in:

- (a) all present and after acquired goods including any services supplied by the Company in connection with the provision of those goods; and
- (b) any proceeds of any sale of the goods; and
- (c) any proceeds of any insurance to secure (with equal priority) payment of all amounts owing; and
- (d) the security interest will continue until the Buyer has paid all amounts owing to the Company.

Financing Statements or Financing Change Statement

7. The Buyer agrees that:

- (a) The Company may register (either or both) financing statements and financing change statements under the PPSA in any goods supplied;
- (b) It will promptly sign any further documents, provide any further information or do any other things that the company reasonably requires at the Buyer's expense to enable the Company to perfect and maintain the perfection of its security interest (including by registering a financing statement or financing change statement).
- (c) It indemnifies (and if requested will reimburse) the Company for all expenses that it incurs in registering a financing statement or financing change statement or releasing goods charged by the statement;
- (d) It will not register or permit to be registered, a financing statement or a financing change statement in any goods in which the Company has a security interest without the Company's prior written consent;
- (e) It will give the Company 14 days prior written notice of any change in the Buyer's name, business practice or any other details and use its best endeavours to ensure that any applicable financing change statement is registered disclosing the new details;
- (f) The Company will continue to hold a security interest in goods presently or after acquired by the Buyer in accordance with and subject to the PPSA, notwithstanding that the goods may be processed or co-mingled with other goods;
- (g) If the Buyer is in default of the payment terms, it irrevocably grants to the company a right or entry of the properties under the Buyer's control where the goods are reasonable expected to be stored. The Buyer indemnifies the Company and saves it and its servants' and agents harmless in relation to loss or damages as a result of the retaking possession of the goods. Furthermore, if the Company exercises its right of retaking possession of the goods, the Buyer grants to the Company power of sale to resell the goods and further acknowledges that any shortfall owing after the goods are resold will be a debt due from the Buyer to Company;
- (h) To the extent that part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133, and 134 of the PPSA which are for the Buyer's benefit or place any obligations on the Company in the Buyer's favour, will not apply and where the Company has rights in addition to those in part 9 of the PPSA, those rights will continue to apply;
- (i) To the extent that part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company;
- (j) And to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors regardless of whether the goods have become fixtures at any time before payment has been made for them.

PMSI

8. The buyer agrees that:

- (a) Any purchase by it on credit terms from the Company or retention of title supply pursuant to this agreement will constitute a purchase money security interest (PMSI) as defined under section 16 of the PPSA; and
- (b) The PMSI will continue to apply to any goods hereafter acquired or proceeds of sale arising from the sale of the goods supplied by the Company under these terms and conditions.

Warranty Conditions – Non consumer

9. The following clauses apply if the Buyer is not a "consumer" (and that term is defined under New Zealand consumer law):

- (a) The goods provided are not substantially in accordance with the requirements of the agreement between the parties, excluding minor admissions or minor defects which do not substantially affect the normal use of the goods, the Buyer must advise the Company within 24 hours from delivery of the goods otherwise acceptance will be deemed to have occurred;
- (b) If there is a breach by the Company of the manufacturer's warranty provided by the company in relation to the goods either under this agreement or otherwise, the Company will either replace the goods, supply equivalent goods, repair the goods or return the invoiced goods to the Buyer (any of which will be the Buyer's sole remedy in respect of such a breach);
- (c) All claims with respect to a breach of warranty by the Company must be made by the Buyer to the Company in writing within the warranty period otherwise the Company will not be liable for the defect, breach or non-conformance;
- (d) The repair of the goods at the Company's premises is at the Company's option. The cost of returning any defective goods to the company will be met by the Buyer;
- (e) Outside of the warranty period, the parties agree that they hereby contract out of the provisions of the Consumer Guarantees Act 1993. The Company will not be liable to the Buyer for any loss, damage (whether direct, indirect, special or consequential) or injury resulting from any breach of warranty or any defective material, faulty workmanship or otherwise howsoever arising out of this agreement or the installation or the use of goods or their resale or the provision of any services, whether or not caused by the Company's negligence or default or by the negligence or default of its employees or agents or otherwise;
- (f) To the extent permitted by law:
 - (i) The Company is under no liability to the Buyer for any loss or for damage to persons or property or for death or injury caused by any act of omission (including negligent acts or omissions) by the Company or its employees or contractors, wherever occurring, arising from the subject matter of this agreement; and
 - (ii) In respect of any other obligation, breach, or liability (including of its employees, agents, suppliers or subcontractors) under or in connection with a supply, or any failure to perform a supply, which is not covered under this agreement, the Company's maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity) is limited to an amount equal to the sum paid by the buyer to the Company for the goods;
- (g) All other terms, conditions, warranties and guarantees implied or imposed by statute, common law or otherwise in relation to the goods (including without limiting the generality of the foregoing, any implied or imposed warranty or guarantee that the goods are suitable or fit for any particular use or purpose or

that the goods will comply with a sample) are hereby excluded, except for any warranties or guarantees which may or may not be excluded according to the applicable laws or regulation of a country which has proper jurisdiction.

Warranty Clauses – Consumer

10. The following clauses apply if the buyer is the “consumer” (as that term is defined under New Zealand consumer law);

- (a) If there is a breach by the Company of the manufactures warranty provided by the Company in regard to the goods provided under this agreement then:
 - (i)if the failure cannot be remedied or is a major failure as defined in the New Zealand consumer legislation (a “relevant failure”) the company’s liability is as stated in the New Zealand consumer legislation in respect of that relevant failure.
 - (ii)if such a failure is not a relevant failure, then in the Company’s absolute discretion, the Company’s liability is limited to replacement of the goods, the supply of equivalent goods, the repair of goods or the cost of replacing the goods or having them repaired.
- (b) To claim the warranty the Buyer must write to the Company within the relevant warranty specifying the nature of the defect, breach or non-conformance.
- (c) If the Buyer makes a warranty claim in accordance with this clause, the buyer will be responsible for all of the expenses associated with the warranty claim other than the costs of the repair replacement, rectification or refund of the goods, including the cost of returning any defective goods to the company.
- (d) All other terms, conditions, warranties and guarantees implied or imposed by statute, common law or otherwise in relation to the goods (including without limiting the generality of the foregoing, any implied or imposed warranty or guarantee that the goods are suitable or fit for any particular use or purpose or that the goods will come with a sample) are hereby excluded, except for any warranties or guarantees which may not be excluded according to the applicable laws or regulations of a country which has proper jurisdiction.

Limitation of Liability

11.

- (a) The Company will not, under any circumstances be liable for any contingent, indirect, consequential or special losses (including but not limited to loss of profit or income, loss of business opportunity, business interruption, increased expense of operation or any financing and holding costs) damages or injuries arising directly or indirectly from the goods, this agreement or any performance or failure to perform this agreement, whether in contract, tort, negligence, strict liability or otherwise, including (but not limited to) its negligence, default or misconduct even if informed of the possibility of such damages.
- (b) The Company will not be liable for any loss, damage or injury caused to the Buyer’s servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The buyer shall indemnify the Company against any claim by any such person
- (c) For all other liability arising in connection with these terms and conditions (including but not limited to breach of contract, tort, negligence or under and indemnity), then to the extent permitted by law, the Company’s liability is limited to an amount equal to the sum paid by the Buyer to the Company for the goods.
- (d) The buyer agrees to indemnify the Company against all loses and expenses which the Company may suffer or incur due to the Buyer’s failure to observe the Buyers’ obligations under this agreement and any claims made against the Company by any third party in respect of any loss, damage, death or injury arising from the subject matter of this agreement.
- (e) To the extent permitted by law all causes of action against the company arising out of or in connection with the supply of the goods expire unless brought within one month of the time of accrual thereof.

Governing Law

12. These terms and conditions will be interpreted in accordance with applicable government legislation, which will have exclusive jurisdiction over any dispute in relation to the goods or these terms and conditions

Dispute Resolution

13. The Company will endeavour to resolve any dispute between the buyer and itself without the need for court proceedings. Any such attempt is without legal prejudice.

I/We have read, understand and agree to the Terms and Conditions attached to this application.

Name: _____ Title: _____

Signature: _____

Date: _____

In these conditions unless the context otherwise requires:

- (a) Company means **Bay Safety and Supplies Ltd**
- (b) Buyer means the person or company buying the goods from the Company
- (c) Goods means the products being purchased by the buyer from the company
- (d) Agreement means the agreement between the Company and the Buyer for the purchase of the goods
- (e) Price means the price of goods as agreed between the Buyer and the Company
- (f) Person includes a corporation, association, firm, company partnership or individual
- (g) PPSA means the Personal Property Securities Act 1999