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## APPLICATION FOR NCP COMMERCIAL CREDIT ACCOUNT

The Applicant named below applies for a credit account with NCP Trading Ltd on the terms as laid out within this document:

Company Name \_\_\_\_\_ Registration No. \_\_\_\_\_

GST Registered: YES / NO GST No.: \_\_\_\_\_

Trading As: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Trading Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Mobile: ( ) \_\_\_\_\_ EMAIL: \_\_\_\_\_

Business Conducted As: SOLE TRADER PRIVATE COMPANY PARTNERSHIP

(Please choose one) E-TRADER PUBLIC COMPANY OTHERS:

Contact Name For Account: \_\_\_\_\_

Accounts Contact Phone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Accounts E-mail Address: \_\_\_\_\_

Anticipated Monthly Purchases: \_\_\_\_\_

### Details of All Proprietors or Directors:

Full Name(s): \_\_\_\_\_

Home Address: \_\_\_\_\_

Drivers License No.: \_\_\_\_\_

Home Phone: ( ) \_\_\_\_\_ Mobile: \_\_\_\_\_

Full Name(s): \_\_\_\_\_

Home Address: \_\_\_\_\_

Drivers License No.: \_\_\_\_\_

Home Phone: ( ) \_\_\_\_\_ Mobile: \_\_\_\_\_

Initial: \_\_\_\_\_

## Credit References

### 1) Your Account

Code/Name/Number:

Name of Company:

Address: \_\_\_\_\_

Fax: (      )

Contact Name: \_\_\_\_\_

Phone: (      )

### 2) Your Account

Code/Name/Number:

Name of Company:

Address: \_\_\_\_\_

Fax: (      )

Contact Name: \_\_\_\_\_

Phone: (      )

### 3) Your Account

Code/Name/Number:

Name of Company:

Address: \_\_\_\_\_

Fax: (      )

Contact Name: \_\_\_\_\_

Phone: (      )

## NCP GROUP LIMITED TERMS & CONDITIONS OF TRADE

### 1. Parties And Definitions To This Agreement

- 1.1. "The Company" for the purposes of this agreement, shall mean NCP Group Limited, any person or entity acting for or on behalf of NCP Group Limited or with the permission or authority of NCP Group Limited.
- 1.2. "Customer" shall mean the Customer, any person or entity acting for or on behalf of the Customer or with the permission or authority of the Customer as detailed on any quotation, estimate, Agreement to supply or notation as provided by The Company to the Customer.
- 1.3. "Guarantor" shall mean any person (or persons), or entity, who agrees to be held liable for the debts incurred by the Customer in the course of business between the Customer and The Company on a principal debtor basis.
- 1.4. "Price" shall mean the price payable for services as agreed between The Company and the Customer in accordance with clause 4. of this contract.

### 2. Title

- 2.1. Title to any Goods purchased shall not transfer to the Customer until such time the Customer has made payment to The Company in full in cleared funds to The Companies nominated bank account.

### 3. Goods and Services

- 3.1. The Goods and Services provided shall be described on our invoices, quotation, and/or Supply Agreement Agreement, or any other such form as provided by The Company to the Customer.

### 4. Price And Payment

- 4.1. The price shall be at The Company's sole discretion, one or more of the following:
  - (a) The price as quoted by The Company to the Customer. The quoted price or rates shall not alter providing the Customer accepts The Company's quote in writing within seven (7) days of the date of the quotation.
  - (b) The Company's price as per The Company's current Price as when the Goods are provided.

### 5. Payment Terms

- 5.1. Payment shall be at The Company's sole discretion one or more of the following:
  - (a) All invoices shall be paid no later than 14 days after the date stated on the invoice.
  - (b) Payments will be made as agreed between The Company and the Customer. If no payment arrangement is made or payment terms agreed then payment shall be due as stated on the Invoice in cash, cheque, or by direct credit to The Company's nominated account.
- 5.2. Payment shall not be deemed to have been received unless the payment is made in cash or cleared funds are deposited in The Company's nominated account. Any other form of payment will not be accepted as paid until the transaction is deemed to be honoured.
- 5.3. GST and other taxes and duties that may apply will be added to the Price unless they are expressly included in the Price.

### 6. Acceptance Of Terms Of Trade

- 6.1. Any engagement of The Company's Services, including any purchases shall constitute acceptance of the Terms and Conditions of Trade of The Company by the Customer. Should more than one Customer enter into this agreement the Customers shall be jointly and severally liable for payment in full of the Price.
  - 6.2. The terms and conditions of this agreement can only be amended with the written consent of The Company and shall be binding on the Customer.
  - 6.3. In the event that the Customer proposes any change to the structure of the Customers business, a change in Shareholding, Name, Directors, Premises, postal address, registered office or Sale of the business the Customer shall give no less than fourteen (14) days written notice of the proposed change or changes. If any loss is incurred by The Company the Customer shall be liable for any loss suffered by The Company due to the Customer not complying with this provision.
- ### 7. Default and Consequences of Non Payment
- 7.1. If the Customer defaults in payment of any invoice when due, the Customer shall pay all costs and disbursements incurred by The Company in pursuing the debt including legal costs on a solicitor and own Customer basis and The Company's collection agency costs. Disbursements incurred by The Company in pursuing the debt including legal costs on a solicitor and own Customer basis and The Company's collection agency costs.
  - 7.2. Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date payment is received at a rate of 1.5% per calendar month and all interest shall compound monthly before and after any judgement until payment is received in full.
  - 7.3. The Company at its discretion may suspend or terminate the supply of goods and/or services should the Customer, at any time be in breach of any obligation to The Company (including those relating to payment). The Company will not be liable for any loss or damages the Customer has deemed to have suffered because The Company has exercised their rights under this clause.
  - 7.4. If any account remains overdue after thirty (30) days then an amount of \$100+GST shall be charged for administration fees and shall become immediately due and payable.
  - 7.5. Without prejudice to The Company's other remedies at law, The Company shall be entitled to cancel all or any part of any supply agreement with the Customer which remains unfulfilled and all amounts owing to The Company shall, whether or not due for payment, become immediately payable in the event that:
    - (a) any money payable to The Company becomes overdue of payment, or in The Company's opinion the Customer will be unable to meet his payments as they become due; or
    - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or

Initial: \_\_\_\_\_

makes an assignment for the benefit of its creditors; or

- (c) a receiver, liquidator, manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**8. Personal Property Securities Act 1999 ("PPSA")**

8.1. Upon assenting to these terms and conditions in writing the Customer 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 Company to the Customer (if any) and all Goods that will be supplied in the future by The Company to the Customer.

8.2. The Customer 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 Company 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 Company 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 register a financing change statement or a change demand without the prior written consent of The Company; and  
(d) Immediately advise The Company 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.

8.3. The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by The Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Customer shall unconditionally ratify any actions taken by The Company under clauses 8.1 to 8.3

**9. Defects**

9.1. The Customer shall inspect the Goods provided by The Company and shall within seven (7) days of delivery (time being of the essence) notify The Company of any alleged defect, damage or failure to comply with the description or quote.

9.2. The Customer shall afford The Company an opportunity to inspect the goods provided within a reasonable time following completion of the delivery of goods if the Customer believes the Goods or Services to be in any way defective. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect. The Company's liability is limited to the replacement of any defective goods.

**10. Right of Cancellation**

10.1. The Company may cancel any contract to which these Terms and Conditions apply or cancel the delivery of goods prior to the goods being delivered by giving written notice to the Customer. On giving notice The Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any damages or losses arising from such cancellation.

10.2. Should the Customer cancel any contract with The Company the Customer shall be liable for any loss incurred by The Company (including but not limited to loss of profits) up to the time of Cancellation.

**11. Warranty**

11.1. For Goods supplied by The Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the Goods.

11.2. All warranty claims must be accompanied by the invoice relating to the claim or the claim shall not be accepted.

11.3. Any removal of any labels from the product shall void any warranty claim.

11.4. Computer systems come with a 1 year return to base warranty unless otherwise specified.

**12. Refunds & Returns**

12.1. Software is not covered by warranty other than specified by the manufacturer. No refunds are provided on software.

12.2. All returned items are subject to a restocking fee of 30% on retail items and 15% on wholesale items.

**13. Privacy Act 1993**

13.1. The Customer and the Guarantor/s (if separate to the Customer) authorizes The Company to:

- (a) collect, use and retain any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and  
(b) Disclose information about the Customer, whether collected by The Company from the Customer directly or obtained by The Company from any other party, 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 Customer.

13.2. Where the Customer and/or Guarantors are an individual the authorities under clause

13.1 are authorities or consents for the purposes of the Privacy Act 1993.

13.3. The Customer and/or Guarantors shall have the right to request The Company for a copy of the information about the Customer and/or Guarantors retained by The Company and the right to request The Company to correct any incorrect information about the Customer and/or Guarantors held by The Company.

**14. Dispute Resolution**

14.1. All disputes and differences between the Customer and The Company touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

**15. General**

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

15.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland

New Zealand or as otherwise directed by the Court.

15.3. The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by The Company of these terms and conditions.

15.4. In the event of any breach of this contract by The Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the contract price for Services provided and limited to the amount of monies paid to The Company by the Customer in part or full whichever is the lesser amount.

15.5. The Customer shall not be entitled to set off against or deduct from the price any sums owed or claimed to be owed to the Customer by The Company.

15.6. The Company may license or sub-contract all or any part of their rights and obligations without the Customer's consent.

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

15.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

15.9. Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.

15.10. The failure by The Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect The Company's right to subsequently enforce that provision.

I, \_\_\_\_\_ (company name), HAVE READ AND UNDERSTAND THE ABOVE TERMS & CONDITIONS OF TRADE, AND HEREBY AGREE TO THEM:

APPLICANT'S NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

Initial: \_\_\_\_\_

## PERSONAL GUARANTEES BY DIRECTORS

1. In consideration of NCP Trading Ltd approving and accepting this Application for a Credit Account by the Applicant, we the persons named below as Guarantors hereby jointly and severally guarantee to NCP Trading Ltd the due and punctual payment by the Applicant of all moneys owing or payable by the Applicant to NCP Trading Ltd and the due performance and observance by the Applicant of the Terms and Conditions set out above and of the Additional Conditions of Sale attached.
2. The liability of any Guarantor of the Applicant shall not be impaired or affected by:
  - (a) The granting of time or any other indulgence to the Applicant or any other Guarantor whether in respect of the payment of the moneys or otherwise;
  - (b) The making of any composition or the entry into any arrangement with the Applicant or any other Guarantor;
  - (c) The Guarantor, being a company, being placed in liquidation or provisional liquidation or to the extent permissible by law having an Administrator appointed to it;
  - (d) The Applicant if a natural person becoming or being declared bankrupt or entering into any composition or arrangement with his creditors or assigning his Estate or any part thereof for the benefit of his creditors or becoming of unsound mind or dying;
  - (e) The absence of notice to the Guarantor of the granting of any further accommodation to the Applicant after the date thereof;
  - (f) Any other acts, omissions, delays or defaults on the part of NCP Trading Ltd whereby the liability of the Guarantor would otherwise have been discharged or affected.
3. This Guarantee shall be a continuing guarantee and shall not be discharged or released by any payment made by the Applicant or any other Guarantor which is thereafter avoided by statute or otherwise for any reason whatsoever.

### First Guarantor

Full Name(s): \_\_\_\_\_

Private Address: \_\_\_\_\_

Drivers License No.: \_\_\_\_\_ Phone: (    ) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Second Guarantor

Full Name(s): \_\_\_\_\_

Private Address: \_\_\_\_\_

Drivers License No.: \_\_\_\_\_ Phone: (    ) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Initial: \_\_\_\_\_