



# DUO NZ LIMITED

## APPLICATION FOR CREDIT ACCOUNT

Whereas:- (“the Customer”) hereby applies for credit from Duo NZ Limited (“the Company”) and in support of this application the Customer provides the following information:-

FULL NAME OF CUSTOMER: \_\_\_\_\_

TRADING NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

POSTAL ADDRESS: \_\_\_\_\_

ADDRESS OF REGISTERED OFFICE: \_\_\_\_\_

ADDRESS FOR SERVICE: \_\_\_\_\_

ACCOUNTS CONTACT NAME: \_\_\_\_\_ EMAIL: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_ POSITION: \_\_\_\_\_

THE CUSTOMER PREMISES: Owned / Rented / Private Residence

CUSTOMER TRADING AS: Private Company / Public Company / Partnership / Sole Trader

Other (specify) \_\_\_\_\_

**IF CUSTOMER A COMPANY:**

(a) Date Incorporated: \_\_\_\_/\_\_\_\_/\_\_\_\_

(b) Capital: \$\_\_\_\_\_

(c) Bank & Branch: \_\_\_\_\_

(d) Contact Person at Bank \_\_\_\_\_ Phone: \_\_\_\_\_

(e) Names & Addresses of all Directors & Shareholders:

Name	Address	Phone
i	_____	_____
ii	_____	_____
iii	_____	_____
iv	_____	_____

**TRADE REFERENCES:**

Name	Company Name	Phone
i	_____	_____
ii	_____	_____
iii	_____	_____
iv	_____	_____

Have you (the Customer) or any of its Directors or Shareholders ever been refused credit or any extension of credit: Yes / No. If, YES, please give details: \_\_\_\_\_

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CREDIT LIMIT REQUESTED: \$ \_\_\_\_\_

## **TERMS & CONDITIONS OF ACCOUNT**

### 1.0 CREDIT ACCOUNT:

- 1.1 Upon completion of the details in this form and its return to the Company the Customer hereby applies to the Company for the total Credit Limit Required as set out above in respect of all outstanding amounts for goods supplied by the Company to the Customer and for payment terms in respect of the said goods as set out below:-
- 1.1.1 20th of the month following delivery; or
- 1.1.2 As otherwise negotiated and agreed \_\_\_\_\_
- 1.2 Upon receipt by the Company of the completed form the Company may at the Company's absolute discretion grant or decline to provide credit to the Customer. The Company shall notify the Customer of its decision as soon as reasonably practicable after receipt of the completed form and if accepted forward a copy of the signed form to the Customer.
- 1.3 The Company may agree to grant to the Customer the Credit Limit Required and the payment terms sought, or any variation thereof, on whatever terms it thinks fit by completing this form and returning a copy to the Customer in accordance with clause 1.2 hereof.
- 1.4 For the purposes of considering this application the Customer hereby:-
- 1.4.1 Warrants and undertakes the information in this form is true and correct in every detail; and
- 1.4.2 Expressly authorises the Company to make any and all enquiries from the parties listed in this form and any other third parties whatsoever to satisfy the Company of the Customers credit worthiness and further hereby expressly authorises such parties to make available to the Company the information sought by the Company.

### 2.0 PAYMENT OF CREDIT ACCOUNT:

- 2.1 The Customer shall make payment in full without deduction or set off for the goods supplied on the due date specified in this form in accordance with clause 1.1.
- 2.2 The Company and the Customer hereby agree the Company shall be entitled to charge interest at the rate of 24% per annum on all overdue accounts or part thereof outstanding from and including the date on which payment was due until and including the date on which payment is made in full.
- 2.3 Whilst any overdue accounts remain outstanding the Company may refuse to supply any further goods to the Customer.
- 2.4 The Company hereby reserves the right to withdraw credit facilities from the Customer at any time without notice subject to existing credit already incurred at the time of withdrawal.

## TERMS AND CONDITIONS OF SALE

Throughout this document The term "Customer" shall mean "Buyer", and the term "Company" shall mean "Seller" for the purposes of the Consumer Guarantees Act 1993.

The Customer orders the Goods on the Terms and Conditions set out herein:-

### 3.0 PAYMENT

- 3.1 The Company's price for Goods sold to the Customer shall be the total net price set out on the invoice as determined by the Company from time to time for any such Goods.
- 3.2 In addition to the total net price of the Goods set out on the invoice the Customer shall pay GST thereon and all such taxes, duties, fees, transport costs, postage and packaging costs and all other costs which the Company determines are payable in respect of the Goods ordered by the Customer ("the Customer's Order") together with any GST thereon (hereinbefore and hereinafter called "the Total Price").
- 3.3 Payment by the Customer shall be in strict accordance with the credit arrangement as determined by The Company pursuant to this application.
- 3.4 Notwithstanding clause 3.3 if the Customer commits an act of bankruptcy, compounds or arranges with all or a number of its creditors or being a company has a receiver appointed or goes into liquidation whether voluntarily or otherwise then payment of the Total Price by the Customer shall be due immediately upon the happening of any such event. The parties acknowledge that the performance of this clause is essential to the Company.
- 3.5 Where the Total Price has become due and payable pursuant to clause 3.3 or 3.4 hereof then, without prejudice to the Company's right to sue for payment or any other remedy, the Company may have, the following shall apply:-
  - 3.5.1 All amounts payable to the Company in respect of any Goods delivered to the Customer shall thereupon become immediately due and payable to the Company without further notice in respect thereof; and
  - 3.5.2 Interest shall be payable by the Customer on all amounts due to the Company at the rate of 24% per annum and such interest shall be calculated on a daily basis from the due date for payment until payment is received in full by the Company; and
  - 3.5.3 The Customer shall pay all of the Company's legal costs (including Solicitor/Client costs) pertaining to any enforcement action taken by the Company against the Customer for payment of all or any amounts due.

### 4.0 DELIVERY OF GOODS:

- 4.1 The Company shall deliver the goods to the Customer as soon as is reasonably practicable after acceptance of the Customer's Order.
- 4.2 Delivery of Goods shall be deemed to have taken place when the Company delivers the Goods to the Customer or the Customer's agent or any other person or carrier to whom the Company has been authorised by the Customer to deliver such Goods whether expressly or impliedly and whether in writing or orally.
- 4.3 Unless expressly agreed in writing between the parties as to the means of delivery of the Goods the Company may effect delivery in any manner the Company determines.
- 4.4 All references to proposed delivery dates made by the Company whether orally or in the Sales Invoice are estimates only and the Company shall not be bound by such estimates. The Company shall take all reasonable steps to comply with such proposed delivery dates.

## 5.0 RETURN OF GOODS:

5.1 Where the Goods are of acceptable quality and otherwise comply with the other Guarantees set out in the Consumer Guarantees Act 1993 the Customer may not return the Goods supplied by the Company in accordance with the Customer's Order unless the Company expressly agrees in writing to a request from the Customer to accept the return of the Goods and the Customer complies with all the terms and conditions (if any) that the Company may impose as prerequisite to accepting the return of the Goods.

## 6.0 RISK OF GOODS:

6.1 The risk in the Goods supplied by the Company to the Customer shall immediately pass to the Customer upon delivery of such Goods to the Customer (as determined by clauses 4.2 or 4.3) notwithstanding that title/ownership to the Goods may have been retained by the Company.

6.2 Pending payment in full by the Customer to the Company in respect of the Goods the Customer shall insure the Goods in the name of the Company and the Customer for their respective rights and interests and such insurance shall be for a sum sufficient to cover the Total Price payable to the Company taking into consideration any deductions the insurance company may be likely to make. The Customer shall on request of the Company provide sufficient evidence of the existence of such insurance.

## 7.0 TITLE/OWNERSHIP OF GOODS:

7.1 The Company shall retain title/ownership to the Goods delivered to the Customer until the Customer has paid for the Goods in full and the Customer acknowledges that the Customer has received oral advice the receipt of which the Customer has acknowledged in writing, as to the way in which the Customer's right to undisturbed possession of the Goods pursuant to the Consumer Guarantees Act 1993 could be disturbed by the Company.

7.2 If the Customer does not make payment in full for the Goods by the due date as determined in accordance with clauses 3.3 or 3.4 hereof, then in such event, and without prejudice to the Company's other rights and remedies, the Company may:-

7.2.1 Repossess the Goods delivered and in order to effect such repossession the Company, its employees, agents or representatives are hereby authorised by the Customer to enter into any of the Customer's premises where the Goods may be located. The Customer hereby indemnifies the Company in respect of any claim, action, damage or expense incurred or threatened as a result of the Company exercising such powers of repossession and entry and shall pay to the Company all costs incurred incidental to the recovery of the Goods; and

7.2.2 The Company may sell any such prepossessed Goods in any manner and at any time it sees fit and may apply the proceeds of sale on account of any monies payable by the Customer to the Company.

## 8.0 THE COMPANY'S LIABILITY:

8.1 Where the Customer does not make known either expressly or by implication to the Company the purpose for which the Goods are being acquired by the Customer then the Customer shall ensure the Goods supplied are reasonably fit for the purpose for which the Goods are being acquired by the Customer.

8.2 The Company shall not be liable to repair or replace defects in the Goods that have occurred otherwise than through the normal and proper use of the Goods by the Customer or have emerged otherwise than from faulty design, materials or workmanship of the Company or manufacturer.

## 9.0 BUSINESS USE:

9.1 The Customer hereby acknowledges that if the Customer is acquiring Goods from the Company for the purpose of a Business then the Customer and Company hereby expressly agree the provisions of the Consumer Guarantees Act 1993 shall not apply to the agreement for the supply of the Goods.

9.2 "Business" shall have the same meaning as set out in Section 2 of the Consumer Guarantees Act 1993.

9.3 Where clause 9.1 applies, the Customer hereby warrants and undertakes with the Company that the Customer shall in a like manner contract out of the provisions of the Consumer Guarantees Act 1993 where the Customer is on-selling the Goods to a consumer who is acquiring the Goods for Business purposes.

9.4 The Customer hereby indemnifies the Company for all liability, costs, damages and loss the Company may suffer from the Customer's failure to comply with clause 9.3 hereof.

10.0 DISPUTE RESOLUTION:

10.1 The Customer and Company hereby agree that any dispute or difference ("the Dispute") which may arise between the Customer and Company as to the meaning or application of any part of this Agreement or any other matter touching or concerning this Agreement shall be actively and in good faith negotiated by the parties with a view to a speedy resolution of the Dispute.

10.2 If the Customer and Company are unable to resolve the Dispute then the Customer and Company hereby agree to endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation or such similar techniques agreed upon by the Customer and the Company.

10.3 If the Customer and the Company do not agree within five (5) business days as to the dispute resolution techniques and procedures to be adopted then the Dispute shall be referred by the parties to arbitration pursuant to the Arbitration Act 1908 or any then statutory provisions relating to arbitration.

11.0 PROPER LAW:

11.1 This Agreement and these Terms and Conditions of Sale shall be governed by New Zealand Law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.

12.0 GUARANTEE:

12.1 Where the Customer is a company the Directors and Shareholders of the Company, and where the Customer is a Trust the trustees, (hereafter "the Guarantors") HEREBY IN CONSIDERATION of the Company supplying goods to the Customer upon credit hereby:-

12.1.1 Guarantee payment of all accounts and the performance of the covenants herein contained; and

12.1.2 Indemnifies the Company against any loss the Company might suffer should this agreement be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

12.2 The Guarantors hereby covenant with the Company that:-

12.2.1 No release delay or other indulgence given by the Company to the Customer or any other thing whatsoever whereby the Guarantors would have been released had the Guarantors been merely a surety shall release or prejudice or affect the liability of the Guarantors as a guarantor or as indemnifier.

12.2.2 As between the Guarantors and the Company the Guarantors may for all purposes be treated as the Customer and the Company shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantors.

12.2.3 The Guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive payment of the accounts.

12.2.4 Should there be more than one Guarantor their liability under this guarantee shall be joint and several.

13.0 WARRANTY:

13.1 The Customer and (if the Customer is a company) its Directors and Shareholders and all other persons entering into this Agreement as trustees of a Trust or as authorised agents of any other entity hereby warrant and undertake that the information contained in this form is true in every respect and further acknowledge that the Company is relying on the accuracy and truthfulness of the information in reaching its decision to make credit available to the Customer.

14.0 PRIVACY ACT 1993:

14.1 The Customer and (if the Customer is a company) its Directors and Shareholders and all other persons entering into this Agreement as trustees of a Trust or as authorised agents of any other entity hereby consent and

authorise the Company to make all and any enquiries from the persons listed as the Trade References above or any other third parties in order for the Company to satisfy itself regarding the Customer's creditworthiness.

- 14.2 The Privacy Act 1993 may entitle the Customer to have access to and, if necessary, to request the correction of personal information which the Company holds about that person.
- 14.3 The Customer hereby expressly authorises the persons listed as the Trade References above or any other third parties to release to the company to the fullest extent permitted by the Privacy Act 1993 all personal information collected and held on the Customer regarding the Customers credit worthiness and the Customer hereby indemnifies the persons listed as the Trade References above or any other third parties in respect of all or any claim, proceeding or action whatsoever taken against the aforesaid as a result of them releasing to the company the personal information regarding the customer.

# CONSUMER GUARANTEES ACT 1993 ACKNOWLEDGEMENT

## 15.0 RIGHT TO UNDISTURBED POSSESSION:

15.1 The Customer acknowledges that the Customer has received oral advice that the Customer's right to undisturbed possession of the Goods, conferred by Section 5(c) of the Consumer Guarantees Act 1993, could be effected by clause 7.0 of the section of this document titled Terms and Conditions of Sale.

## 16.0 BUSINESS USE:

16.1 The Customer acknowledges that the Customer has received oral advice that where the Customer is purchasing goods from the Company for the purpose of a business the provisions of the Consumer Guarantees Act 1993 shall not apply to the agreement for the supply of the goods, and hereby expressly agrees that the said Act shall not apply in the aforesaid circumstances.

**DATED** this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

(Print)

(Sign)

**SIGNED** by the Customer

(Customer Name)

in the presence of:

**SIGNED** by the Guarantors

in the presence of:

**SIGNED** for and on behalf of the Company

Duo NZ Limited

(Both being Directors of the Company)

in the presence of:

Director

Director