

Tauranga - NEW ZEALAND

## RECORD FORM AND APPLICATION FOR CREDIT ACCOUNT

Trade Name \_\_\_\_\_  
 Legal Name \_\_\_\_\_  
 Company Number \_\_\_\_\_ GST Number \_\_\_\_\_  
 Contact Name \_\_\_\_\_  
 Delivery Address \_\_\_\_\_  
 City \_\_\_\_\_ Country NZ  
 Postal Code \_\_\_\_\_  
 Telephone \_\_\_\_\_ FAX \_\_\_\_\_  
 E-Mail \_\_\_\_\_  
 Activity \_\_\_\_\_

Postal Address \_\_\_\_\_  
 City \_\_\_\_\_ Country \_\_\_\_\_  
 Postal Code \_\_\_\_\_ Date Of Birth (if sole trade) \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Mobile 0 \_\_\_\_\_  
 Registered Office \_\_\_\_\_

**TRADE REFERENCES** ( Excluding Credit Cards, Fuel Suppliers, Landlord, Power and Phone)

1. \_\_\_\_\_ Phone \_\_\_\_\_  
 2. \_\_\_\_\_ Phone \_\_\_\_\_  
 3. \_\_\_\_\_ Phone \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1993) I authorise any persons or company to give information as may be required in response to credit inquiries. I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE of Brazil Express Limited, which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Director Full Name \_\_\_\_\_

## **TERMS AND CONDITIONS OF SALE**

The Contract forms the basis on which Supplier sells Goods to the Buyer. Any invoice or other document evidencing or describing any Goods is incorporated into the Contract. Each sale of Goods shall be made on the terms of this Contract, unless a variation to the terms of this Contract is expressly authorized to the Buyer in writing by a director of Supplier.

### **Orders**

When an order has been accepted by Supplier, that order cannot be cancelled by the Buyer except with the written consent of Supplier. Supplier may, prior to delivering any Goods pursuant to an order, determine not to fulfill the order if it has genuine concerns as to the creditworthiness of the Buyer.

### **Specifications**

Specifications and samples contained or referred to in, or submitted with, the Contract or any quotation, or any catalogues or other publications maintained or issued by Supplier, are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such specifications and samples, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances, shall be allowed.

### **Taxes and duties**

Goods and services tax, and other taxes and duties in connection with the sale of the Goods to the Buyer, are not included in the price and shall be the responsibility of the Buyer. Where the payment of such taxes or duties is the responsibility of Supplier at law, the price shall be increased by the amount of such taxes or duties.

### **Freight**

Supplier will determine the method of freight used to deliver the Goods to the Buyer. Unless the parties agree otherwise, the Buyer will pay all costs associated with the delivery of the Goods.

### **Delivery and risk**

Supplier must deliver the Goods to the place specified by the Buyer.

Supplier reserves the right to deliver the Goods by installments. Each installment shall be effected pursuant to the terms of this Contract.

Supplier shall not be liable for failure to deliver the Goods on or before any date. The Buyer is required to accept any Goods regardless of whether Supplier fails to deliver the Goods on or before any date.

The risk of any loss of, or damage or deterioration to, Goods supplied by Supplier shall be borne by Supplier until the Goods have been unloaded at the place specified by the Buyer, at which time the risk shall pass to the Buyer, unless the Goods are unloaded by the Buyer, in which case the risk shall pass to the Buyer on commencement of the unloading of the Goods.

Supplier reserves the right to charge interest at a rate of 2% per month on any moneys outstanding under the Contract from the date payment is due until the date payment is received by Supplier.

### **Right to Set Off**

Notwithstanding anything expressed or implied elsewhere in the Terms and Conditions of Sale, Brazil Express may from time to time, set off against any claim or demand the Customer may have against Brazil Express, any claim or demand whatsoever that Brazil Express may have against the Customer, but only to the extent that the same is lawful. Brazil Express' rights under this clause are in addition to all other rights, powers or remedies available to Brazil Express at law or in equity.

### **Warranties**

The Goods will meet all warranties expressly provided in writing by Supplier to the Buyer in respect of the Goods. If any Goods fail to meet such a warranty, Supplier's liability for such failure shall be limited, at the discretion of Supplier, to either:

Refunding the purchase price for the Goods to the Buyer; or Repairing or replacing those Goods.

No responsibility will be accepted for any defective Goods or any under supply of Goods, unless Supplier receives reasonable notice of that defect or under supply within 7 days of delivery.

The Buyer acknowledges that it is acquiring the Goods for the purpose of a business, and the parties agree that the Consumer Guarantees Act 1993 shall have no application to the sale of Goods to the Buyer.

### **Consumer Guarantees Act 1993**

The Buyer shall, in relation to the supply of any Goods by the Buyer, contract out of the provisions of the Consumer Guarantees Act 1993 to the extent that the Buyer is entitled to do so under that Act.

The Buyer shall not, in relation to the supply of any Goods by the Buyer, give or make any undertaking, assertion or representation in relation to the Goods without the prior written approval of Supplier.

## **Liability**

Supplier shall not be liable for any loss of profits, or any consequential, indirect or special loss, damage or injury of any kind whatsoever, suffered by the Buyer arising directly or indirectly from any breach of any of Supplier's obligations arising under or in connection with the Contract, from any cancellation of the Contract, from any negligence, misrepresentation or other act or omission on the part of Supplier, its servants, agents or contractors, or from any other cause whatsoever.

**Title to the Goods and the Supplier's Security Interests**

Title in the Goods will at all times remain the property of the Supplier until payment for the Goods, and payment of all other monies from time to time owed by the Buyer to the Supplier, has been made to the Supplier in full.

If any reason title in the Goods does pass to the Buyer prior to the Buyer making payment for the Goods in full and/or prior to the Buyer making payment in full of any monies already owed to the Supplier, the Buyer hereby grants the Supplier the following security interests:

A Purchase Money Security Interest in the Goods and/or in any product into which the Goods are incorporated, and/or in any proceeds or revenue or book debt and the like derived from any sale or other form of commercial exploitation of the Goods, to secure payment for the Goods; and

A security interest in all present and future acquired property of the Buyer, including inventory, to secure both the purchase price of the Goods and to secure any other monies already owed by the Buyer to the Supplier.

The Buyer also agrees, in respect of such securities, that it:

Waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the security interests granted under this contract;

It and the Supplier have agreed that nothing in sections 114(1)(a), 120(2), 121, 125, 129, 131 and 132 133 and 134 of the PPSA shall apply to this Contract, or the securities granted under this Contract.

## **Default**

If the Buyer defaults in the due payment of any moneys payable to Supplier, whether under the Contract or otherwise, or if the Buyer is in default in the performance of its obligations under the Contract or any other contract between Supplier and the Buyer or if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Buyer or if a receiver shall be appointed over all or any of its assets, or if any Goods are at risk, Supplier, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable. In any of the foregoing events, Supplier shall not be responsible for, or liable for, any damage caused in enforcing its security interest in the Goods. All costs and expenses of or incurred by Supplier as a result of any action taken by Supplier in enforcing its security interest in the Goods together with transportation and storage charges shall be payable by the Buyer upon demand. Any suspension of the Contract by Supplier shall not prevent it terminating the Contract during the period of suspension.

Supplier shall have the right to enter the Buyer's premises, and take back possession of any Goods, if any sums are outstanding to Supplier. The Buyer will meet the costs of such repossession.

At any time after a default occurs, Supplier may (whether or not Supplier has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

## **Conflict**

These terms and conditions are paramount, and, to the extent that there is any conflict between any provision of them and any invoice, quotation or other document evidencing or describing any Goods, the terms and conditions will prevail. Further, if there is any other document or arrangement, including any document of the Buyer, which conflicts with the Contract, the Contract shall prevail. Subject to clause 7.1, in relation to the Contract, all terms, conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise which are not expressly included in writing in the Contract (including without limitation, those implied pursuant to the Sale of Goods Act 1908) are expressly excluded.

## **Guarantee**

In consideration of the Supplier agreeing to open a credit account and otherwise transacting business or continuing to transact business with the Buyer, the undersigned (where more than one jointly and severally) ("Guarantor"): unconditionally and irrevocably guarantees to the Supplier the due and punctual payment by the Buyer of all amounts now or hereafter payable by the Buyer to the Supplier under the terms of any Contract

between the Buyer and the Supplier; as a separate and independent obligation, indemnifies the Supplier against any loss suffered by the Supplier in the event that any Contract between the Buyer and the Supplier is void or voidable or wholly or partially unenforceable or because any law may require the Supplier to repay to the Customer any moneys received by the Supplier; agrees that the liability of the Guarantor under this guarantee and indemnity will constitute a principal obligation of Guarantor and such liability will not be relieved or in any way affected in a manner prejudicial to the Supplier by any granting of time, waiver or forbearance to sue by the Supplier or by any other act, omission, matter, circumstance or law whereby Guarantor as a surety only would, but for the provisions of this clause, have been released from liability; and agrees that this guarantee and indemnity will be a continuing guarantee and indemnity and will remain in full force and effect until all payments now or at any time hereafter payable by the Buyer to the Supplier under any Contract between the Buyer and the Supplier have been paid in full, including payments which are subsequently avoided or affected in any way, whether under any statutory provision or otherwise, so as to deprive the Supplier of the full benefit of such payment.

**General**

The Buyer may not assign all or any of its rights or obligations under the Contract without the prior written consent of Supplier.

The failure by Supplier to insist on performance of any provision of this agreement is not a waiver of its right at any later time to insist on performance of that or any other provision in the Contract.

The Contract shall be governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Neither party will be liable for any failure to perform or for any delay in performing any of its obligations under the Contract where such failure or delay is caused by strike, lockout, difficulty in procuring materials, shortage of labour, failure or delays by suppliers or contractors, legislative, government or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatever (whether similar or not to the foregoing) beyond such party's reasonable control.

The Contract is entered into on behalf of and is intended to bind and be for the benefit of Supplier and Supplier's successors and assigns.

The Buyer authorises any person or company, under the Privacy Act 1993, to provide the Supplier with any information the Supplier may require in response to its credit enquiries, and for the Supplier to furnish to any third party details of this application for credit and any subsequent dealings the Buyer may have with the Supplier.

In these terms and conditions of sale:

"Buyer" means the person, firm, company or other entity buying the Goods from the Company.

"Contract" means these terms and conditions together with any and every invoice or other document evidencing or describing any Goods.

"Supplier" means Brazil Express Limited

"Goods" means all goods or other property which are supplied by Supplier to the Buyer.

"PPSA" means the Personal Properties Securities Act 1999.

The terms "after-acquired property", "at risk", "default", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the respective meanings given to them under, or in the context of, the PPSA.

I/We the undersigned declare the above information to be correct and agree to the above terms and conditions.

|                              |                                  |
|------------------------------|----------------------------------|
| <b>Signed for the Buyer:</b> | <b>Signed for the Guarantor:</b> |
| <br><br>                     | <br><br>                         |
| <b>Name:</b>                 | <b>Name:</b>                     |
| <b>Position:</b>             |                                  |
| <b>Date:</b>                 | <b>Date:</b>                     |