

IT MAKES SENSE LIMITED

CREDIT ACCOUNT APPLICATION FORM

The following information is given in support of an application to open an account with **It Makes Sense Limited**. All details will remain in strict confidence unless otherwise needed for legal purposes.

Full Name of Applicant:

Trading Name (if different):

Company Registration Number (if applicable):

Registered Office (if applicable):

Date Company Registered (if applicable):

Postal Address:

Delivery Address:

Email Address:

Phone Number:

Fax Number:

Principal Directors:

Home Phone No. of Principal Shareholder:

Length of time in present business:

Solicitor's Name: **Phone**

Accountant's Name: **Phone**

Credit Reference Name (1) **Phone**

Credit Reference Name (2) **Phone**

Credit Reference Name (3) **Phone**

I/WE, the undersigned, state that the information contained in this Credit Account Application Form ("Application") is true and correct, and hereby agree to the attached Terms and Conditions of Sale.

The Applicant acknowledges that the granting, continuance or alteration of the terms of any credit account is at the sole discretion of It Makes Sense Limited. The Applicant also acknowledges that It Makes Sense Limited is not obliged to accept this Application. Where this Application is executed for and on behalf of a company, the signatory undertakes that he/she has the authority to bind the company and to provide the information under this Application.

Name of Applicant

Signature of Authorised Signatory

Name of Authorised Signatory

Date

IT MAKES SENSE LIMITED

TERMS AND CONDITIONS OF SALE

1. GENERAL

- 1.1. These Terms and Conditions are the terms and conditions under which the Vendor supplies and sells Goods to the Buyer, and supersede all prior arrangements between the Vendor and Buyer whether written or verbal.
- 1.2. These Terms and Conditions prevail over any additional or inconsistent conditions specified by the Buyer, or appearing in any purchase order of the Buyer, and no variation to these Terms and Conditions will be binding on the Vendor unless specifically accepted in writing.
- 1.3. The Buyer acknowledges and agrees that the Vendor may vary these Terms and Conditions from time to time by written notice to the Buyer. Any such variation will take effect from the date of the Vendor's written notice.

2. DEFINITIONS

- 2.1. For the purposes of these Terms and Conditions, the following words have the following meanings:
 - "**Buyer**" means the person or business who buys the Goods from the Vendor;
 - "**Force Majeure**" means inability to obtain supplies or labour, industrial disputes, delays, act of God, fire, flood, storm, adverse weather conditions, or other matters beyond the Vendor's control;
 - "**Goods**" means all goods or other property supplied by the Vendor to the Buyer;
 - "**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985 at the rate prevailing from time to time, including any tax levied in substitution for that tax (but excluding any penalties or interest payable under such Act);
 - "**Terms and Conditions**" means these terms and conditions of sale; and
 - "**Vendor**" means It Makes Sense Limited.

3. PRICES AND ORDERING

- 3.1. The prices for the Goods will be as specified in the Vendor's standard wholesale price list in effect from time to time. The Vendor may change its wholesale price list at any time and is not obliged to notify the Buyer of any change. The Buyer agrees to keep the Vendor's wholesale price list confidential.
- 3.2. All prices are in New Zealand dollars, and are exclusive of any GST (which will be payable by the Buyer in addition to the price).
- 3.3. Subject to clauses 4.1 and 4.2, prices do not include the cost of freight and insurance.
- 3.4. No order for Goods received by the Vendor may be withdrawn by the Buyer without the consent of the Vendor, which consent (if any) may be given on such terms as the Vendor may require (including, without limitation, immediate payment of all costs and expenses incurred by the Vendor arising from such withdrawal of order). The Vendor is not obliged to accept any order it receives from the Buyer, and may refuse to do so without being obliged to state a reason. The Vendor may, without any liability to the Vendor, cancel any order for Goods prior to delivery of the Goods.

4. DELIVERY

- 4.1. Unless otherwise agreed in writing, the Vendor will arrange to deliver the Goods to the address of the Buyer in New Zealand notified to the Vendor in the Buyer's order. Any timeframes for delivery given by the Vendor are estimates only and the Vendor will not be liable for failure to deliver within any estimate timeframe. Time for delivery will not be of the essence. All costs of freight and insurance incurred by the Vendor will be the responsibility of, and will be on-charged to, the Buyer.
- 4.2. The Buyer may not reject delivery of the Goods solely by reason of a shortfall. The Buyer must give written notice to the Vendor of Goods short supplied or damaged within 7 days of delivery. Failure to do so will be regarded as an acceptance of the Goods.

5. PAYMENT

- 5.1. The Vendor will invoice the Buyer for the Goods on or following delivery of the Goods.
- 5.2. Payment for the Goods is due on or before the 20th of the month following delivery (unless 7 day or 14 day payment terms have been specified by the Vendor, in which case payment will due on or before the expiry of 7 days or 14 days (as the case may be)).
- 5.3. Despite any other provision of these Terms and Conditions, the Vendor may, at any time and for any reason, place the Buyer on "stop credit", and refuse to take any orders from the Buyer for Goods on credit. If the Buyer is placed on "stop credit", the Vendor will only supply the Goods on a "cash" basis, so that the Buyer must pay for the Goods before the Goods are delivered.
- 5.4. If payment is not made in full on or before the due date, the Vendor may, in addition to any other rights or remedies it may have:
 - (a) remove any discounts that might have applied to the Goods (e.g any prompt payment discount or authorised dealer discount); and
 - (b) charge interest on all overdue amounts at the rate of 2% per month (accruing daily) from the due date until the date of actual payment.
- 5.5. If payment is not made in full by the due date, the Buyer agrees to pay all costs and expenses incurred by the Vendor as a result of the failure by the Buyer to pay, including all accounting costs, court costs, and collection and legal costs incurred by the Vendor (including legal costs on a solicitor and own client basis).

6. RISK AND TITLE

- 6.1. The Buyer agrees that risk in any Goods supplied by the Vendor passes to the Buyer immediately upon delivery of the Goods to the address of the Buyer as specified in the order for the Goods.
- 6.2. The Buyer agrees that title to all Goods supplied by the Vendor to the Buyer will remain with the Vendor, and will not pass to the Buyer, until the Buyer has paid in full all amounts payable from time to time by the Buyer to the Vendor.
- 6.3. The Buyer also agrees that until title to the Goods has passed to the Buyer:
 - (a) the Buyer will not sell or dispose of the Goods except in the ordinary course of its business;
 - (b) the Buyer will insure the Goods against theft, fire and all other usual business risks in the name of the Vendor as owner, and the Buyer as conditional Buyer. The Buyer will pay all premiums for such insurances and keep all policies current, and will deliver to the Vendor upon request a copy of all such insurance policies;
 - (c) the Buyer will keep the Goods clearly labelled as the Goods of the Vendor in a separate part of the Buyer's premises;
 - (d) the Buyer will hold the proceeds of sale of the Goods in a separate bank account on trust for the Vendor;
 - (e) the Vendor may, at any time, inspect the Goods or require the Goods to be returned to it, and the Buyer authorises the Vendor or its agent to enter (using reasonable force if necessary) the premises of the Buyer or any other place the Vendor considers on reasonable grounds such Goods are situated at any time to inspect or take possession of the Goods. The Vendor may exercise such rights of entry, inspection and repossession if the Vendor considers the Buyer is in default of any obligation to the Vendor, or if the Vendor is concerned about the condition of any Goods or the credit worthiness of the Buyer, and that the Vendor is not required to justify any action or give prior notice to the Buyer of such entry; and
 - (f) the Buyer will fully indemnify the Vendor in respect of any claim or demand that may be brought in respect of any entry, inspection and repossession under paragraph (e) above.
- 6.4. The Buyer acknowledges that clauses 6.2 and 6.3 amount to a Security Agreement and create a Security Interest in favour of the Vendor in all Goods delivered to the Buyer that are owned by the Vendor. The Buyer agrees that such Security Interest is taken in all present and after-acquired Goods supplied by the Vendor that are in the possession of the Buyer or its agents from time to time, together with the Proceeds of any such Goods.

- 6.5. The Buyer agrees and acknowledges that the Vendor may register a Financing Statement to protect its Security Interest under these Terms and Conditions. The Buyer waives its right to receive a verification of such Financing Statement.
- 6.6. The Buyer will, at the Vendor's request, promptly give the Vendor all assistance and information as may be necessary to enable the Vendor to register a Financing Statement to protect its Security Interest under these Terms and Conditions, and to meet all other requirements under the Personal Property Securities Act 1999 in respect of the Goods to ensure that the Security Interest constitutes a Perfected Security Interest.
- 6.7. For the purposes of this clause 6, the terms "Security Agreement", "Security Interest", "Perfected", "Proceeds" and "Financing Statement" will have the meanings given to them in the Personal Property Securities Act 1999.

7. PRIVACY

- 7.1. The Buyer authorises the Vendor to collect, retain and use any personal information about the Buyer and its principal officers, directors and shareholders, including the information contained in any account application form completed by the Buyer ("Information"), for the purposes of credit approval, establishing credit worthiness and credit limits, administering the Buyer's account, meeting the Vendor's obligations to the Buyer, and enforcing the Vendor's rights against the Buyer.
- 7.2. The Buyer authorises the Vendor to provide the Information to employees, contractors and agents of the Vendor and any other person in the ordinary course of business for any of the purposes specified in clause 7.1, to credit agencies for the purposes of maintaining effective credit records, and to the Vendor's solicitors or external debt collection agencies in the event of any default by the Buyer.
- 7.3. The Buyer acknowledges that, where Information can be easily retrieved, the Buyer may have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge.

8. RETURNS

- 8.1. Goods will not be accepted for return, other than under clause 9.7, without prior authority from the Vendor or one of its employees or agents. The Vendor is not obliged to accept the return of any Goods that comply with the warranties in clauses 9.2 and 9.3, but may elect to do so at its sole discretion.
- 8.2. Goods will not be accepted for return, other than under clause 9.7, unless they are in a re-saleable condition and in their original packing.
- 8.3. All Goods returned to the Vendor must be accompanied by:
 - (a) an explanation and reason for return;
 - (b) the Vendor's invoice number and date; and
 - (c) the name of the Vendor's employee or agent who authorised the return, unless the return is made under clause 9.7.
- 8.4. The Vendor reserves the right to charge a restocking fee of up to 15% of the invoice value for returns that are not justified or authorised, or to reject such returns and return the Goods to the Buyer (at the Buyer's cost).

9. WARRANTIES AND LIABILITY

- 9.1. The Buyer warrants that all information provided by the Buyer to the Vendor is true and correct.
- 9.2. The Vendor warrants as follows:
 - (a) there are no liens, encumbrances or other interests in the Goods that would prevent title to the Goods passing to the Buyer upon payment pursuant to clause 6.2; and
 - (b) for the period from delivery of the Goods until the end of any applicable warranty period specified in the relevant warranty card for the Goods, the Goods will be of merchantable quality and fit for the purpose for which they are intended. If no warranty period is specified in the relevant warranty card, the warranty period under this clause 9.2 will be 12 months following delivery.
- 9.3. The warranties in clause 9.2 are in addition to any other warranty provided in any applicable warranty card provided with the Goods.
- 9.4. No warranty is given for the Goods where any failure to comply or defect results from any of the following:
 - (a) improper storage or handling of the Goods by the Buyer, its employees, agents, contractors or customers;
 - (b) damage or defects following delivery to the Buyer caused by earthquake, fire or excessive heat;
 - (c) use, installation, modification or alteration (including repair) of the Goods other than as recommended or authorised in writing by the manufacturer or the Vendor;
 - (d) fair wear and tear on the Goods;
 - (e) unusual or excessive use of the Goods by the Buyer or the Buyer's customer;
 - (f) failure by the Buyer, its employees, agents, contractors or customers to maintain the Goods in accordance with any care or maintenance instructions provided by the Vendor or manufacturer; or
 - (g) any other matter or event specified on the applicable warranty card as invalidating or being excluded from any warranty.
- 9.5. The Buyer's sole remedy against the Vendor for any Goods that do not comply with any warranty in clauses 9.2 or 9.3 will be for the Vendor to repair or replace such Goods, at the Vendor's option. Provided that if neither option is available to the Vendor (as determined solely by the Vendor) the Vendor will refund the price paid for the non-compliant Goods.
- 9.6. The Buyer acknowledges that:
 - (a) any attempt by any person not authorised by the Vendor or manufacturer to repair the Goods;
 - (b) any alterations made to the Goods except as authorised by the Vendor or manufacturer; and
 - (c) any failure to promptly report a warranty claim,will invalidate the warranties in clauses 9.2 and 9.3.
- 9.7. All warranty claims under clauses 9.2 or 9.3 must be made in writing to the Vendor. Any Goods the subject of a warranty claim must be returned to the Vendor pursuant to clause 8.3.
- 9.8. The warranties set out in clauses 9.2 and 9.3 represent the Vendor's only warranties to the Buyer in relation to the Goods, and apart from any condition or warranty implied by statute that cannot be excluded, restricted or modified by these Terms and Conditions, the Vendor excludes to the fullest extent permitted by law all other express or implied warranties in respect of the Goods including but not limited to implied warranties of merchantability or fitness for a particular purpose. All statements, technical information and recommendations made by the manufacturer and/or the Vendor about the Goods are believed to be reliable, but do not constitute a guarantee or warranty. No statements or recommendations other than those contained in the technical information published by the manufacturer and/or the Vendor from time to time, will have force or effect unless contained in an agreement signed by an authorised representative of the Vendor.
- 9.9. The Buyer will ensure that all of its contracts for sale by the Buyer of the Goods to its customers or end users contain a provision stating that the provisions of the Consumer Guarantees Act 1993 will not apply where the Goods are acquired by the customer or end user for the purposes of a business. The Buyer indemnifies the Vendor against any and all costs, damages, liabilities and expenses incurred or suffered by the Vendor as a result of failure by the Buyer to comply with this clause 9.9.
- 9.10. In no event will the Vendor be liable (whether in contract, tort, negligence or in any other way) to the Buyer for:
 - (a) loss of profits or savings, loss of goodwill or opportunity, loss of production, loss or corruption of data, or wasted management or staff time;
 - or
 - (b) loss, damage, cost or expense of any kind whatsoever which is indirect, consequential, or of a special nature, arising directly or indirectly from any Goods supplied by the Vendor to the Buyer, even if the Vendor had been advised of the possibility of such loss, damage, cost or expense.
- 9.11. In no event will the Vendor's total liability under any claim of any nature arising directly or indirectly from the Goods supplied by the Vendor to the Buyer exceed the price paid by the Buyer for the specific Goods to which the relevant claim relates.
- 9.12. Nothing in these Terms and Conditions will be construed or interpreted so as to limit or exclude in any way any of the rights or remedies of any person under the Consumer Guarantees Act 1993 where such rights or remedies cannot lawfully be limited or excluded.

10. MISCELLANEOUS

- 10.1. These Terms and Conditions embody the entire agreement of the parties in relation to the subject matter of these Terms and Conditions and supersede all prior understandings, communications and representations between the parties, whether oral or written. No amendment to these Terms and Conditions will be effective unless in writing and signed by an authorised representative of the Vendor.
- 10.2. The Vendor will not be liable for any failure to comply with these Terms and Conditions due to Force Majeure. The Vendor may cancel an order if the cost to the Vendor of supplying any Goods is increased materially as a result of such Force Majeure, and the Vendor and the Buyer cannot agree on how the additional cost is to be borne.
- 10.3. These Terms and Conditions will be governed by the laws of New Zealand, and the Vendor and the Buyer submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 10.4. The United Nations Convention on Contracts for the International Sale of Goods (1980) and adopted in New Zealand by the Sale of Goods (United Nations Convention) Act 1994, will not apply to the supply of Goods under these Terms and Conditions.