



APPLICATION FOR CREDIT ACCOUNT

Company Name _____

Trading Name (if different) _____

Postal Address _____

Delivery Address 1 _____

Business Phone _____

Type of Business (circle one) Sole Trader / Company / Partnership / Other _____

Trade References
Company

Contact

Phone

1 _____

2 _____

3 _____

Directors/Owners _____

Email Address _____ Mobile _____

Business Manager _____

Email Address _____ Mobile _____

Purchasing Contact _____

Email Address _____ Mobile _____

Accounts Contact _____

Invoice/Statement Email Address _____

Terms of Sale: refer Terms and Conditions of Sale attached.

Signature _____

Position _____ Date _____

Terms and Condition of Sale

1. Parties

- 1.1. The Contract for sale of goods and/or services is between Profile Polymers Limited (hereinafter referred to as PPL) and the Buyer as defined in the application for credit account.

2. General

- 2.1. PPL will contract on these terms only, and
 - 2.1.1. Receipt of an order from the Buyer will be acceptance of the Buyer of these terms,
 - 2.1.2. Despite anything stated to the contrary in the buyers inquiries or on Buyers orders.
- 2.2. The only circumstance where any variation to these terms will apply is where PPL has expressly agreed in writing to that variation.

3. Definition

- 3.1. In these terms and conditions of sale, unless the context requires otherwise:
 - 3.1.1. "Goods" mean the goods being purchased by the Buyer from PPL.
 - 3.1.2. "Carrier" means the carrier responsible for delivery of the goods to the Buyer.
 - 3.1.3. "GST" means Goods and Services Tax in terms of the New Zealand Goods and Services Tax Act 1985.

4. Credit History

- 4.1. The Buyer authorises PPL to obtain information as may be required to ascertain the Buyers credit worthiness.

5. Warranties Expressly Excluded

- 5.1. All goods are sold subject to:
 - 5.1.1. All conditions and warranties implied by law being expressly excluded,
 - 5.1.2. Except to the extent that PPL is not lawfully entitled to exclude them.
- 5.2. The Buyer agrees that:
 - 5.2.1. The buyer will acquire all of the goods supplied by PPL for business purposes; and
 - 5.2.2. The guarantees and rights expressed or implied in the Consumer Guarantees Act 1993 in favour of the Buyer shall not apply to the sale of any goods by PPL.

6. Liabilities

- 6.1. PPL will not be liable for:
 - 6.1.1. Loss caused by any factor beyond reasonable control of PPL.
 - 6.1.2. Failure to deliver to the Buyer by a specified date.
 - 6.1.3. The loss of, or damage to, goods while in the possession or control of PPL (even if the loss or damage results from PPL's negligence or default).
 - 6.1.4. The loss or damage to goods while in transit (even if the loss or damage results from PPL's negligence or default).
 - 6.1.5. Errors in the transmission of emails, facsimiles and other means of electronic communication.
 - 6.1.6. Deterioration of goods as a result of exposure to the elements, after arriving at the destination.
 - 6.1.7. Loss consequential to any of the above.

7. Defective Goods / Shortages

- 7.1. PPL's liability for defective goods or loss caused by defective goods is limited to (at PPL's option) either,
 - 7.1.1. Replacing any goods that the buyer is entitled to reject; or,
 - 7.1.2. Refunding the price paid by the Buyer to PPL for those goods
- 7.2. PPL shall not be liable to replace any defective goods if:
 - 7.2.1. Written notice of the defect is not received by PPL within 7 days of the receipt of the goods by the Buyer; and
 - 7.2.2. PPL is not given reasonable opportunity to investigate the claim.
 - 7.2.3. The defect is the result of incorrect storage or handling by the carrier or Buyer or any other person not under the direct control of PPL.
 - 7.2.4. Any attempt to repair the defective goods is made by any person or persons not organised by PPL to effect such repair, or
 - 7.2.5. The defective goods have been modified without the approval of PPL.
- 7.3. PPL shall not be obliged to replace any defective goods while the Buyer is in default in relation to any payment or in the performances of any obligation under these terms and conditions of sale.

8. Delivery

- 8.1. Unless otherwise agreed, the buyer will arrange delivery of the goods.
- 8.2. Unless otherwise agreed the price of the goods excludes the costs of delivery. PPL may, at the Buyers request, arrange delivery of the goods but the Buyer will be charged for the additional cost that PPL incurs.
- 8.3. PPL will endeavour to meet agreed delivery dates but will not be liable for late delivery.
- 8.4. Delivery will be deemed to have been made when the goods arrive at the delivery point agreed with the Buyer. Alternatively when the goods have been made available for collection by the Buyer, delivery will be deemed to have been made.
- 8.5. If the Buyer fails or refuses to take delivery of the goods, PPL may (without limiting any other rights it may have) charge the Buyer for any expenses or additional costs incurred by PPL as a result of the delay.
- 8.6. All claims for short delivery or defective delivery, or goods damaged in transit, must be made within 7 days of delivery.
- 8.7. A delivery tolerance of plus or minus 10% or such other percentage as the parties may agree in writing will be applied to the quantity of goods ordered by the Buyer. If the quantity of goods supplied is within this tolerance, the order will be fulfilled and the amount under or over supplied will be deducted or charged for pro-rata.
- 8.8. If for any reason goods cannot be delivered then:
 - 8.8.1. All expenses incurred by PPL in connection with the contract me be set off at the option of PPL against any sum payable by PPL to the Buyer; and
 - 8.8.2. The balance, if any, of PPL's expenses in connection with the contract over the amount of the set off, must be paid to PPL by the Buyer.
- 8.9. PPL may refuse to deliver goods ordered by the Buyer if the Buyer is not up-to-date with payment.
- 8.10. Orders may only be cancelled if:
 - 8.10.1. PPL has received written notice of cancellation prior to the commencement of production of the goods; and
 - 8.10.2. The goods form part of PPL's stock and trade and are not custom made.

9. Price

- 9.1. The price of the goods will be the price in PPL's price list current at the date the goods are despatched by PPL.
- 9.2. The price of the goods excludes any amount payable in respect to GST and any other taxes and duties relating to the supply of the goods. If GST or any other tax or duty is payable the GST will be paid by the Buyer in addition to the price.
- 9.3. PPL reserves the right to alter the price of items where the cost of supply changes due to currency fluctuations and circumstances beyond their control.
- 9.4. All prices quoted are in NZ\$ unless otherwise stated or agreed.

10. Payment

- 10.1. Unless otherwise agreed in writing payment for the goods, plus GST (if any), is to be paid in full no later than 20th day of the month following delivery of the goods.
- 10.2. However, PPL reserve the right to require payment for the goods in cash before such goods are despatched.
- 10.3. PPL may, at any time, require the Buyer to pay the goods by letter of credit or bank cheque or post dated cheque or secure payment for the goods by way of an assignment of debt, an instrument by way of security, a mortgage or an agreement to mortgage, or in any other manner whatsoever.
- 10.4. The Buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to PPL.

11. Samples

- 11.1. Any samples exhibited to or inspected by the Buyer prior to placing an order is solely for the convenience of the Buyer and these terms and conditions shall not contribute a contract for sale by sample.

12. Dies

- 12.1. Unless otherwise agreed between the Buyer and PPL any dies made or obtained by PPL and used to produce the goods, shall remain the property of PPL, and PPL may use or dispose of such dies at PPL's sole discretion.

- 12.2. If any die is agreed by the Buyer and PPL to be an exclusive die, PPL shall use that exclusive die to produce only the goods and any further goods ordered by the Buyer.
- 12.3. Upon the Buyer committing any act of bankruptcy (if the Buyer is an individual); or the commencement of winding up of the Buyer or the appointment of a receiver or manager of the property of the buyer (if the Buyer is a company), the exclusive die may be used or disposed of by PPL (notwithstanding clause 12.4) at PPL's sole discretion.
- 12.4. PPL shall not dispose of any exclusive die unless that die has not been used to produce a material quantity of goods (having regard to the quantity of goods produced from time to time using that die) during the preceding 2 years.
- 13. Intellectual Property**
 - 13.1. Copyright and all other intellectual property rights in relation to PPL drawings, specifications and other technical information relating to the goods remain the property of PPL.
- 14. Patents and Copyright**
 - 14.1. If any goods are to be supplied to the Buyers design, the Buyer warrants that the manufacturer or supply of goods by PPL will not infringe any patent, copyright, registered design or other rights of any other person and the Buyer shall indemnify PPL against any liability incurred by PPL, including any costs and expenses, in the event of any claim being made that the manufacture or supply of such goods by PPL infringes any patent, copyright, registered design or rights of any other person.
- 15. Manufacturing Standards**
 - 15.1. The Buyer acknowledges that the goods will be manufactured and supplied by PPL in accordance with various manufacturing standards. Details of these standards are available, on request, from PPL. If there are any inconsistency between a manufacturing standard and these terms of sale, the terms of sale will prevail.
- 16. Retention of Title**
 - 16.1. PPL will remain the legal and equitable owner of all goods agreed to be sold by PPL to the Buyer ("*the goods*") until the operative date.
 - 16.2. The "*operative date*" is the date on which all money then owned by the Buyer to PPL for any reason is paid.
 - 16.3. The Buyer must until the operative date store all the goods in a manner that enables them to be identified as PPL property.
 - 16.4. The Buyer may, however, sell the goods in the usual course of its business. The following provisions will apply to each sale.
 - 16.4.1. As between the Buyer and PPL, the Buyer is PPL's agent or bailee.
 - 16.4.2. As between the Buyer and the Buyers customers, the Buyer sells as principal and not as agent of PPL.
 - 16.4.3. The proceeds of each sale must be held by the Buyer in a separate bank account in trust for PPL, and
 - 16.4.3.1. The Buyer is under a fiduciary duty to account to PPL for the proceeds of sale, and
 - 16.4.3.2. This provision is binding on the Buyer, its agents and assigns even if the Buyer is in liquidation or receivership or under any similar third party financial management.
- 17. Registration of Security Interest**
 - 17.1. The Buyer acknowledges that clause 16 creates a security interest ("security interest") as that term is defined in the Personal Property Securities Act 1999 ("PPSA") in the goods. The Buyer will at the company's request promptly execute any documents, provide all necessary information and do anything else required by the Company to ensure that the Security Interest constitutes a Perfect Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the goods.
 - 17.2. The Buyer agrees, to the extent permitted by law, that the Buyer shall have no rights under the following provisions of Part 9 of the PPSA to:
 - 17.2.1. receive a notice under section 114(1)(a);
 - 17.2.2. receive a statement of account under section 116;
 - 17.2.3. surplus distributed under section 117;
 - 17.2.4. recover any surplus under section 119;
 - 17.2.5. receive notice of any proposal of the Company to retain collateral under section 120(2);
 - 17.2.6. object to any proposal of the Company to retain collateral under section 121;
 - 17.2.7. not have any goods damaged in the event that the company were to remove an accession under section 125;
 - 17.2.8. receive notice of the removal of an accession under section 129;
 - 17.2.9. apply to the Court for an order concerning the removal of an accession under section 131;
 - 17.2.10. redeem collateral under section 132; and
 - 17.2.11. reinstate the contract under section 133.
 - 17.3. The Buyer further agrees that where the Company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
 - 17.4. The Buyer waives its rights under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- 18. Risk**
 - 18.1. Risk and insurance shall apply as follows:
 - 18.1.1. The risk in each of the goods will pass to the Buyer when the Buyer takes delivery of them.
 - 18.1.2. The Buyer will "*take delivery*" when the Buyer or any person acting on the Buyers behalf receives the goods.
 - 18.1.3. The Buyer must insure each of the goods in the name of PPL for their full value effective from the time at which the Buyer takes delivery.
 - 18.1.4. The Buyer must replace or repair any goods that are lost or damaged.
 - 18.2. While money is owed by the Buyer to PPL:
 - 18.2.1. PPL may at any time inspect or retake possession of any of the goods that have been sold by the Buyer. This clause has priority in the event of any conflict with other provisions of this agreement
 - 18.2.2. The buyer irrevocably authorises PPL to enter any property where any of the goods are or might be kept for the purposes of exercising PPL's rights under this clause.
 - 18.2.3. The Buyer will Indemnify PPL against all claims and losses incurred by PPL in exercising its rights under this clause. PPL must, however, take reasonable care when exercising those rights.
 - 18.2.4. The Buyer will pay PPL all costs incurred by PPL in exercising its rights under this clause.
 - 18.2.5. If any of the goods are recovered by PPL from the Buyer, PPL will credit the Buyer with the value of those goods. The value will be the wholesale value as at the date of recovery fixed after taking into account damage to or deterioration in the goods.
- 19. Assignment**
 - 19.1. PPL may at any time assign all or any part of the moneys owed to PPL by the Buyer.
- 20. Set-Off**
 - 20.1. PPL may set-off any amount which it owes the Buyer against any amount which the Buyer owes or will owe PPL. This right of set-off does not affect any other rights that PPL has in law or equity.
- 21. Interests and Costs**
 - 21.1. The Buyer will pay interest at 2.5% per month on any outstanding payments due to PPL, calculated from the due date for payment to the date of actual payment.
 - 21.2. The Buyer must pay all costs incurred by PPL in enforcing or attempting to enforce compliance by the Buyer with its obligations under these conditions of sale.
- 22. Guarantees**
 - 22.1. In consideration of PPL supplying goods and/or services to the Buyer, the Guarantor:
 - 22.1.1. Guarantees payment of all obligations and the performance of all covenants and terms in this terms and conditions of sale; and
 - 22.1.2. Indemnifies PPL against any loss that PPL might suffer should the terms and conditions of sale be breached.
 - 22.2. The guarantor covenants with the Landlord that:
 - 22.2.1. No release, delay or other indulgence given by PPL to the Buyer or to the Buyers successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or indemnifier.
 - 22.2.2. As between the Guarantor and PPL, the Guarantor may for all purposes be treated as the Buyer and PPL shall be under no obligation to take proceedings against the Buyer before taking proceedings against the Guarantor.
 - 22.2.3. Should there be more than one Guarantor, their liability under this guarantee shall be joint and several.



23. Miscellaneous

- 23.1. The Buyer will be responsible for disposing, at its own cost, of materials used in the packaging or delivery of the goods.
- 23.2. If at any time PPL does not enforce any of these terms of sale or grant the Buyer time or other indulgence, PPL will not be construed as having waived that term or its rights to later enforce that or any other term.
- 23.3. Where any provision of these terms of sale is rendered void, unenforceable or otherwise ineffective by operation of law that shall not affect the enforceability or effectiveness of any other provision of these terms and conditions of sale.
- 23.4. This contract is governed by the law of New Zealand.

Name (Print)

Company

Signature

Date