

# Joinery Hardware Limited

(Including its successors' and assigns)

P.O. Box 251091

Pakuranga

AUCKLAND 2140

Ph: (09) 273 3352 Fax: (09) 273 3351



## Application for Credit

Please circle one						Company	Trust	Partnership	Sole Trader	Other (specify)
Legal Name						(If individual please give full name, if a trust, please state full names of trustees and supply Trust Deed)				
Trading Name										
Postal Address										
Delivery Address										
Telephone			Fax		Mobile					
Accounts Contact				Email						
Purchasing contact				Email						
Type of Business				Order Number Required		Yes	No			
<b>Financial &amp; Professional Advisors</b>										
Accountant					Telephone					
Solicitor					Telephone					
<b>Trade References</b>										
Company			Contact			Phone Number				

### Declaration

1. I/We hereby make application for a credit account to be opened in the name of the customer. **I/We acknowledge we have read and accept the terms & conditions attached** and in particular we agree to pay all accounts by the 20th of the month following the date of invoice. I/we understand that failure to do so renders us liable for default interest as set out in clause 5, as well as costs and expenses as set out in clause 11 of the attached terms and conditions of sale.
2. I/we agree that pending payment of any particular goods, the customer holds the goods as bailee and Joinery Hardware Limited will retain ownership in the unpaid goods or any proceeds of on sale (full details are set out in clause 9 of the attached terms and conditions of sale).

Signed \_\_\_\_\_  
(For and on behalf of customer)

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Signed \_\_\_\_\_  
(For and on behalf of Joinery Hardware)

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

## Terms and conditions of sale

- 1. In these terms and conditions of sale, unless the context otherwise requires.**
  - 1.1. "The company" means Joinery Hardware Limited and includes its agents, employees, successors and assigns.
  - 1.2. "Customer" means any person, firm, organisation or corporation that has requested or purchased the supply of goods from the company, and includes employees, and agents of the customer.
  - 1.3. "Goods" means any item available for sale to the customer by the company.
- 2. Applicability**

The conditions of sale set out below shall apply to all contracts for the supply of goods made with the company and the customer and shall not be deemed or construed to be modified, rescinded or waived in whole or in part except by a signed and written amendment by both of the parties.
- 3. Acceptance**

Acceptance of delivery of any goods will be deemed to be acceptance by the customer of these terms and conditions, notwithstanding anything that may be stated to the contrary in the customer's inquiries or on the customer's orders. This clause is subject to clause 12.
- 4. Prices**
  - 4.1. Prices unless otherwise stated are exclusive of Goods and Services Tax ("GST"), other taxes, import duties, levies or tariffs, freight or insurance charges which, if applicable, will be an extra charge to the customer.
  - 4.2. Prices may change without notice
- 5. Payment**
  - 5.1. Payment of all accounts is to be made by the 20<sup>th</sup> day of the month ("the payment date") following the month of the date of the invoice, without offset. In the event that payment is not received by the payment date, default interest may be charged by the seller at the rate of 2% per month on the overdue balance.
  - 5.2. No credit shall be extended on overdue accounts, except by prior written agreement with the company.
  - 5.3. Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.
- 6. Delivery**

Dates given for delivery are stated in good faith but are not to be treated as a condition of the sale. No claim shall be made by the buyer on account of late delivery, however caused. Late delivery shall not constitute a breach of this contract by the company, and the customer shall not be able to cancel the contract because of late delivery. Delivery by the company to a carrier shall be deemed to be delivery to the customer.
- 7. Unanticipated events**
  - 7.1. The company shall be entitled to cancel or suspend delivery of the goods in the event of any delay or non performance due directly or indirectly to any cause beyond the reasonable control of the company. The customer shall have no claim whatsoever against the company in consequence of any such cancellation or suspension.
- 8. Risk**
  - 8.1. The risk in the goods shall pass to the customer upon delivery.
  - 8.2. The customer shall be obliged to insure the goods from the time of delivery to the customer and, pending payment in full, insure the goods in the name of the company and customer for their respective interests.
- 9. Title**
  - 9.1. Without prejudice to the liability of the customer to pay for goods supplied, such goods shall remain the property of the company as legal and equitable owner pending cleared payment in full of all monies in respect of those particular goods supplied by the company to the customer.. The customer acknowledges that the customer is in possession of such unpaid goods as bailee for the company pending payment in full for those particular goods.
  - 9.2. Until payment for any particular goods has been made the company shall be entitled to retake possession of those unpaid goods. To allow the company to do that, the customer grants the seller an irrevocable right to enter at any time any premises or place of the customer where the goods are held and to remove the goods. The company may then resell the goods and retain the proceeds of such sale. Any shortfall shall be a debt owed by the customer to the company.
- 10. Cancellation**
  - 10.1. Notwithstanding any other agreement as to the terms of payment, the total purchase price shall immediately become due and payable and the company shall have the right to forthwith cancel this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:
    - (a) the customer ceases or threatens to cease to carry on business
    - (b) the customer enters into any negotiations for an arrangement or composition with its creditors.
    - (c) the customer is unable to pay its debts (including contingent liabilities) as they fall due.
    - (d) the customer becomes bankrupt or commits an available act of bankruptcy or proceedings are taken for liquidation of the customer's affairs.
    - (e) the customer, being a company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the customer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme of arrangement with its creditors or any class thereof.
    - (f) any distress or execution is levied on the customer.
    - (g) breach by the customer of any other terms contained in this contract.
  - 10.2. Upon the happening of any one or more than one of the above events the company will be entitled to repossess and resell goods which remain the property of the company within the terms of clause 9.
- 11. Costs**

If the customer defaults in performing its obligations under this contract and the company incurs expenses in enforcing its rights under this contract, the customer shall pay those expenses (including full legal costs and debt collection costs) to the company on demand.
- 12. Claims**
  - 12.1. Any claim not made in writing within 14 days after delivery of the goods shall be deemed to have been waived.
  - 12.2. All claims of any nature must be accompanied by the goods, particulars of the claim and by the relevant invoice.
- 13. The Privacy Act 1993**
  - 13.1. The customer acknowledges that
    - (a) Personal information collected or held by the company (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:-
      - administering whether directly or indirectly, the company's contracts and enforcing the company's right there under.
      - marketing goods and services provided by the company.
      - ascertaining at any time the customer's creditworthiness and obtaining at any time credit reports, character references or credit statements.
      - enabling the company to notify any credit agency of any application for credit or default on any obligation of the customer to the company to provide such personal information to any credit agency so such credit agency can maintain effective accounting records.
      - enabling the customer to communicate with the company for any purpose.
  - 13.2. The customer authorises the company to obtain at any time from any person or entity, any information the company may require to process and/or accept any application for credit the customer may make to the company or to perform or complete any of the other purposes for which the customer has provided personal information to the company. The customer authorises any such person to release to the company any personal information that person holds concerning the customer.
  - 13.3. Correction of personal information held by the company may be requested by the individual concerned at the offices of the company.
- 14. Liability**
  - 14.1. The customer agrees and acknowledges that all supplies of goods from the company will be acquired for the customer's business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between the customer and the company.
  - 14.2. The conditions, warranties and guarantees contained in the Sale of Goods Act 1908, to the extent permitted, are hereby excluded.
  - 14.3. The company's liability is limited to the amount (excluding GST) invoiced to the customer for the goods.
  - 14.4. The customer acknowledges that it has relied on its own skill and judgment in ordering the goods from the company and no representation made by the company shall shift that reliance of the customer.
- 15. Personal Properties Securities Act**
  - 15.1. Upon assenting to these terms and conditions in writing the customer acknowledges and agrees that this agreement constitutes a security agreement for the purposes of the PPSA; and a security interest is taken in all Goods supplied by Joinery Hardware Limited to the Customer and all Goods that will be supplied in future by Joinery Hardware Limited to the customer during the continuance of the parties relationship And for which payment has not been received by Joinery Hardware Limited.
  - 15.2. The customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this agreement, or the security under this agreement, and waives its rights under sections 117(1)(c), 121, 125, 129, 131 and 132 of the PPSA.
  - 15.3. The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to Joinery Hardware Limited's interest in the Goods. The customer shall pay Joinery Hardware Limited any costs in relation to a financing statement or financing change statement.

**16 This Guarantee is given in favour of JOINERY HARDWARE LIMITED, which might at any time supply goods on request to the Customer.**

**17 In consideration of JOINERY HARDWARE LIMITED (hereinafter called 'the company') agreeing to supply**

**18 ..... (hereinafter called 'the customer') with goods:**

***19 Name of customer***  
**20**

**21 I/WE .....**

**22 Name of Guarantor/s (print)**  
**23**

**24 HEREBY UNCONDITIONALLY AND IRREVOCABLY GUARANTEE(S) WITH THE COMPANY AS FOLLOWS:**

1. I/we personally guarantee and undertake to the company the payment of any and all monies and obligations now or hereafter owed by the customer to the company.  
I/we acknowledge that I/we have received a copy of the company's terms and conditions and have read them and agree to them including default interest and collection costs.
2. I/we will pay immediately and on demand of the company, any monies which the customer has not paid the company by the payment date.
3. I/we acknowledge that:
  - (a) this document is an unconditional and continuing guarantee and shall be irrevocable and shall remain in full force and effect until all monies owing to the company by the customer and all the obligations under the credit account have been fully paid, satisfied or performed and may be enforced by the company. This guarantee shall remain in full force and effect until a written release is provided by the company.
  - (b) My/our liability under this personal guarantee shall be that of a principal debtor, not merely a surety, and I/we shall be jointly and severally liable with the customer for all monies due and payable and obligations owing to the company by the customer.
4. I/we agree to be bound as principal debtor/s so that my/our liability under this guarantee shall not be released by any delay or other indulgence or concession which the company may grant to the customer or any compromise which the company may reach or variation the company may agree with the customer, or by any other act, matter, circumstance of law whereby I/we would but for the provision of this clause have been released from my/our liability under the guarantee.
5. This guarantee is in addition to, and not in substitution for, any other security or rights which the company may presently have or may subsequently acquire and this guarantee may be enforced against me/us without having recourse to any such securities or rights and without making demand or taking proceedings against the customer.
6. I/we agree independently of the guarantee, to indemnify the company against all damages, claims and losses (including costs) which the company may suffer or incur as a result of any failure by the customer and which the company may suffer as a result of any default by me/us when demand is made from me/us under this guarantee to make due and punctual payment of the monies due and payable whether or not the liability of the customer is or has become void or unenforceable for any reason and whether or not the foregoing guarantee shall be void or unenforceable against me/us for any reason.
7. I/we agree to waive any rights of subrogation in respect of any security held by the company in respect of the customer's obligations to the company until the customer has paid all monies due to the company. All dividends and other payments received by me/us from the customer (whether in liquidation or otherwise) shall be taken and applied by the company as payments in gross. I/we will not in any way compete with the company for payment in the event of bankruptcy or liquidation of the customer.

8. This guarantee shall bind me/us and take effect as a deed immediately upon me/us signing it.
9. I/we authorise the company to obtain from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me as a guarantor for credit applied for, or provided to, the Customer. I agree that if the company approves the Customer's application, this authorisation remains in force until the credit facility covered by the Customer's application ceases. In addition I/we authorize the use of my personal information in accordance with clause 13 of the Company's terms and conditions.

**I/we acknowledge that the Company has recommended that I/we obtain independent legal advice as to the effect of the above Guarantee and Indemnity and the potential liability faced by me/us as guarantor(s). I/We confirm that I/we have obtained, or elected not to obtain, such independent legal advice and have agreed to provide this Guarantee and Indemnity.**

**Dated this                      Day of                      20..**

\_\_\_\_\_  
Guarantor 1: *print name*

\_\_\_\_\_  
Guarantor: *signature*

\_\_\_\_\_  
Guarantor's Residential Address

\_\_\_\_\_  
Guarantor's D.O.B

\_\_\_\_\_  
Witness: *print name*

\_\_\_\_\_  
Witness: *signature*

\_\_\_\_\_  
Witness's Residential Address

\_\_\_\_\_  
Guarantor 2: *print name*

\_\_\_\_\_  
Guarantor: *signature*

\_\_\_\_\_  
Guarantor's Residential Address

\_\_\_\_\_  
Guarantor's D.O.B

\_\_\_\_\_  
Witness: *print name*

\_\_\_\_\_  
Witness: *signature*

\_\_\_\_\_  
Witness's Residential Address