

**ACCOUNT APPLICATION
Plus TERMS OF TRADE**



Legal name of business ("Applicant", "I", "we")*: _____

Trading as*: _____

Type of business*: + Sole Trader + Partnership +Company +Other: _____

Date of commencement*: ____/ ____/ ____

Director's / owner's name*: _____

Director's / owner's address*: _____

Director's / owner's phone*: _____

Director's / owner's email*: _____

Business postal address*: _____

Delivery address for goods*: _____

Business phone*: _____

Business fax: _____

Business email*: _____

Business website*: _____

I/We warrant that the above information is correct to the best of my/our knowledge, and that by signing below, I/We agree I/we have read, understood and agree to be bound by the **BROLLY SHEETS LIMITED** Terms of Trade attached and this account and credit application (together these "Terms"). Upon below I/we also understand and accept that these Terms will govern every order or confirmation or quotation that I/We enter into with, or is issued by, **BROLLY SHEETS LIMITED** for the purchase of Goods and Services.

I/We warrant to **BROLLY SHEETS LIMITED** that I/We as Directors, Employees or Agents of the Applicant are authorised to enter into these Terms on behalf of the Applicant.

Authorised signatory of the Applicant (please also initial pages 2 and 3):

Name: _____

Signature: _____

Position held: _____

Date: ____/ ____/ ____ (dd/mm/yy)

Witness signature: _____

Guarantor(s):

Director / Owner to complete:

Name *: _____

Signed as a personal guarantor*: _____

Date *: ____/ ____/ ____

Director / Owner to complete:

Name *: _____

Signed as a personal guarantor*: _____

Date *: ____/ ____/ ____

TERMS AND CONDITIONS OF TRADE



Applicable Terms & Acceptance of Order

These terms and conditions of trade and each credit & application form completed by an Applicant (together these **Terms**) comprise the contract between the Applicant ("**Customer**") and BROLLY SHEETS LIMITED ("**Company**") and shall apply to all orders for goods and services ("**Goods**") confirmations and quotations accepted, entered into or issued by the Company. In the case of conflict or dispute, these Terms shall prevail over any document or any verbal or written message from the Customer. Where the Company fails to enforce any of these Terms the Company will not be deemed to have waived these rights with respect to any term or condition or right.

The Company recommends the Customer seek legal advice on nature and extent of the Customer's liability and obligations under these Terms before signing the credit & application form.

Quotation and Price

The Company shall publish a price list in \$NZ excluding GST (or for sales to Australia the prices shall be in \$A) of its Goods applying at the time of the order or shall confirm the price of Goods as a quotation and the Customer shall confirm acceptance by providing an order to the Company or signing the quotation.

Quotation of Goods shall be valid for thirty (30) days from the date of publication but no quotation will constitute an offer unless signed by the Company and the Company may withdraw any quotation before the Customer's signed acceptance.

The quotation or price may be increased if the Company suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (due to currency changes or supplier price increases or taxation duties) between the date of contract (or where the contract arises from a quotation, from the date of quotation) and the date of delivery, or if the Customer varies or alters the specifications of the quotation or the requirements for the Goods. All prices are exclusive of insurance, freight and other handling charges.

Delivery

Delivery will occur upon the Goods arriving at the Customer's premises or if the Customer advises the Company that it will collect the Goods, upon the Customer or its agent collecting the Goods from the Company. The Company will make every effort to ensure that the Goods are supplied on time where stock is available but will not be responsible for any loss or damage or consequential loss to the Customer arising from delays in delivery. Goods may be delivered separately and in such case each delivery will be regarded as a separate contract and subject to the same payment terms. Failure or delay by the Supplier in making delivery at a specified time shall not cancel or repudiate the contract.

The Customer shall agree that any employee or agent of the Customer who signs for delivery shall be authorised to accept delivery and the Company will not be held liable for missing Goods where a signature has proven delivery.

Payment

Payment shall be made in full before delivery of the Goods for the first two orders made by the Customer, and on the 20th of the month thereafter, where the Company has agreed to provide credit to the Customer (which terms shall be declared to the Customer at the time of the order or quotation). For all other orders or quotations, payment shall be made in full before delivery of the Goods. The Customer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off, counterclaim or otherwise.

The Customer agrees that the Supplier has sole discretion to apply payments from the Customer to any transaction or Supplier invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

If at any time the Company reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide at the Customer's cost, additional security for payment and / or the Company may suspend performance of its obligations under these Terms until security is provided to its satisfaction and the Company may require the Customer to pay all costs incurred as a result of

suspension and re-commencement of supply including legal and debt collection costs.

The Customer must comply with all reasonable and legal directions provided by the Company from time to time concerning pricing, provided that notice in these Terms shall require the Customer to contravene any law.

Interest for Late Payment

The Company may charge interest on any monies outstanding under these Terms at a rate equal to 2% above the Company's bank's retail lending base rate calculated on a daily basis. Interest is payable from the date payment was due until the date the Company receives payment. The right of the Company to charge interest is without prejudice to its other rights or remedies for the Customer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods it has supplied and in the Customer's possession until payment is made in full.

Sales Channels

The Customer will not sell products on Trade Me, Amazon, or eBay.

Risk, Ownership and Title

The Customer agrees that the Company has a legal and equitable right to title in the Goods (ownership) until the contract price is paid.

Regardless of ownership by the Company of the Goods, the Customer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods upon delivery and while in the possession of the Customer. This means that the Customer shall agree to properly store, protect and insure the Goods. Failure by the Customer to properly protect and insure the Goods shall not absolve the Customer of the legal responsibility to the Company to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the Customer.

While title in and to the Goods is retained by the Company, the Customer shall store the Goods separately in its premises and in such a way that they are identifiable as the property of the Company and shall not alter the Goods in any way or mix the Goods with other goods owned by the Customer unless the Customer has paid the Company in full. If the Goods have become the constituent of, or mixed with, or attached to any other goods or property of the Customer, then a proportion of the value of these goods or property shall belong to the Company.

The Company authorises the Customer to sell the Goods to a third party in the ordinary course of business only as the fiduciary agent and bailee of the Company and to hold the proceeds of sale in a separate fund of trust for the Company until the Customer pays the Company in full without deduction or setoff.

In any event where Goods remain unpaid by the Customer the Company has reserved right to enter the premises where the Goods are located during normal business hours and remove Goods relating to the unpaid amount. The Company will not be liable for costs, damages or expenses or any other losses whatsoever incurred by the Customer or a third party as a result of the action, nor liable in contract or tort or otherwise in any way whatsoever. The Customer will at all times indemnify the Company and the Company's agents and representatives, for any liability arising from any act of trespass committed or damage caused by such entry.

The Customer shall inform its creditors of the terms upon which it buys Goods from the Company and must declare the Company's reservation of title and security interest to any Trustee in Bankruptcy, or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of the Company and title to the Goods.

Security Interest

The Customer grants to the Company a security interest in the Goods and all present and future rights in relation to those Goods and all proceeds as security for all amounts the Customer owes the Company and the performance of all of the Customer's obligations under these Terms ("**the Company's Security Interest**").

The Company may register a financing statement to protect the Company's Security Interest.

The Customer will protect the Company's Security Interest in the Goods. In particular, the Customer will: (a) put in place appropriate security precautions to protect the Goods from loss, damage and destruction with an insurer and for an amount acceptable to the Company; and (b) not permit any other security interest to attach to the Goods; and (c) not change the physical appearance of the Goods; and (d) where the Customer is located outside of New Zealand, keep the Goods as the Company's bailee, and separate from all other goods to ensure they are readily identifiable as the Company's property

The Customer agrees: (a) that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of accounts), 120(2) (to receive notice of proposal to take goods) of the Personal Property Securities Act 1999 (**PPSA**) will apply to these Terms or the Company's Security Interest; and (b) to waive all of the Customer's rights under sections 121 (to object to proposal) of the PPSA; and (c) waive the Customer's right to receive a copy of the verification statement confirming registration of financing change statement relating to the PPSA; and (d) that the Company may repossess any Goods at any time if it believes they are at risk.

The Company's Security Interest is a continuing security and will operate irrespective of any intervening payment or settlement of account until the Company has signed a release. The Company's Security Interest has the same priority in relation to all and any Goods supplied to the Customer by the Company at any time.

Grounds for Termination by the Company

The Company may revoke the authority given to the Customer to use or sell the Goods that have not been paid in full or cancel/reduce the Customer's credit limit if (a) the Company deems the credit of the Customer to be unsatisfactory; or (b) the Customer is in default of its obligations under these Terms or any other contract between the Company and the Customer; or (c) the Customer shall commit any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Customer or a Receiver is appointed in respect of all or any assets of the Customer.

Any revocation of authority to use or sell the Goods or cancellation/reduction of the Customer's credit limit shall not relieve the Customer of its obligations to pay all monies owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of money may not have arrived. Termination of these Terms shall not relieve the Customer from liability arising from any antecedent breach of the Terms.

Company Guarantee & Warranty

The Company will warrant the Goods for a period of twelve (12) months from delivery that the Goods are of merchandisable quality and fit for the purpose described in its catalogue or published material.

The Customer acknowledges that the Goods are provided by the Company, and acquired by the Customer, in trade and therefore the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 are expressly excluded from these Terms. .

Where legislation applies any condition or warranty in these Terms and that legislation prohibits the exclusion or modification of the application of, exercise of or liability under such condition or warranty, such condition or warranty shall be deemed to be included in these Terms. All other warranties expressed or implied (including any implied warranties of merchantable quality or fitness for purpose) that may be excluded by law are excluded to the maximum extent permitted by law.

Except as set out in these Terms, and otherwise to the maximum extent permitted by law, the Company shall not be liable for loss of any kind whatsoever. The Customer shall indemnify the Company, its employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including



legal costs and expenses on a solicitor-client basis), liability, proceedings or demand, whether direct or indirect incurred or suffered by any of them as a result of: (a) any breach by the Customer (or its employees, officers, agents or contractors) of these terms; or (b) any wilful, negligent or unlawful act or omission

of the Customer (or its employees, officers, agents or contractors; or (c) the Company recovering any Goods in accordance with these terms.

Claims for Damaged or Defective or Deteriorated Goods

The Company, at its discretion, will repair or replace any damaged or deteriorated Goods or Goods that in the Company's opinion are not of merchandisable quality or fit for the purpose described in its catalogue or published material provided that: (a) the Customer makes a claim specifically identifying the damage or defect(s) within fourteen (14) days of the damage or defect occurring; and (b) the Company has a reasonable opportunity to investigate the claim.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Customer agrees that the claims shall not be considered in respect of Goods which: (i) are not intact and in original condition and packaging; (ii) have been improperly stored causing damage or deterioration; (iii) have been altered in any way different to the condition in which they have been supplied; (iv) have been mixed with or attached to other goods causing damage or deterioration to the Goods; (v) are received by the Company after the expiry of the twelve (12) month warranty period specified under the heading *Company Guarantee & Warranty*.

Claims for Goods incorrectly ordered

The Company, at its discretion, may give credit for returned Goods which are incorrectly ordered by the Customer and which are not damaged or defective and have not been delivered in error. The Company will deduct fifteen per cent (15%) of the value of the Goods as an administration and handling cost provided the Goods are delivered to the Company within fourteen (14) days after original delivery and at the Customer's cost and in the same condition and packaging in which they were dispatched, with a copy of the invoice and packing slip.

Intellectual Property

The Customer agrees that where the Company provides intellectual property to assist the Customer in the form of patents, trademarks and copyrights or written instructions, drawings, plans, manuals and other design information the ownership of such intellectual property shall always remain with the Company and the Customer further agrees that it shall not use the intellectual property in any manner whatsoever whether in complete form or in any way adapted or altered without the prior written consent of the Company.

Guarantor

In consideration of the Company entering into these Terms, the persons named on the Account and Credit Application as the guarantors (**Guarantors**) (if any) jointly and severally: (a) guarantee the due, punctual and full performance by the Customer of its obligations under or in relation to these Terms; and (b) indemnifies the Company from and against any action, suit, claim, demand, cost or expense (including legal costs and expenses on a solicitor own client basis), arising directly or indirectly as a result of any act or omission by the Customer or any breach of the Customer's obligations under these Terms or under any legislation, regulation or by-law. The liability of the Guarantors (if any) under this clause shall constitute a principal obligation of the Guarantors (if any) and shall not be relieved or in any way affected in a manner prejudicial to the Company by any granting of time, waiver or forbearance to sue by the Company. This guarantee shall be a continuing guarantee and shall remain in full force and effect until all of the Customer's obligations under these Terms are fully satisfied.

Applicable Law

These Terms shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.