



SWINNOCK INDUSTRIES LTD.

www.swinnockindustries.co.nz

77 O'Rorke Road, Penrose, Auckland

Tel: 09 579 8624. Fax: 09 579 8885

Email: sales@swinnockindustries.co.nz

ACCOUNT APPLICATION FORM

ENTITY DETAILS:

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ("the Client")

(Please tick) Sole Trader Individual Partnership Ltd Company Other (please state):

Trading as: Postal Address:

Physical Address: Email:

Nature of Business: Years in Business:

Telephone: Fax: Date of Birth:

Contact Name & Position:

OWNERSHIP: please insert Owner(s) / Directors Name(s) in full

1: Address:

2: Address:

IF LIMITED LIABILITY COMPANY – Address of Registered Office:

Date of Incorporation: Incorporation No:

FINANCIAL & PROFESSIONAL ADVISORS:

Shareholders Funds: Paid Up:

Name of Accountant: Solicitor:

Bank: Branch: Acct No:

TRADE REFERENCES

| Company: | Contact Name: | Phone Number: | Account open since: |
|----------|---------------|---------------|---------------------|
| | | | |
| | | | |

General Description of Goods/Products/Services to be Provided:

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I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Swinnock Industries Ltd that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorised to enter into this application and future contracts on behalf of the Client. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

If the applicant is a company then this application form must be signed by a director of the company.

Signed: Print Name: Designation:

Dated this day of, 20

SWINNOCK & CO INDUSTRIES LTD – TERMS & CONDITIONS OF TRADE

- 1. DEFINITIONS**
 - 1.1 "Swinnock Industries Ltd" shall mean Swinnock & Co Industries Limited, or any agents or employees thereof.
 - 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from Swinnock Industries Ltd.
 - 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Swinnock Industries Ltd to the Client; and
 - 1.3.2 all Goods supplied by Swinnock Industries Ltd to the Client; and
 - 1.3.3 all inventory of the Client that is supplied by Swinnock Industries Ltd; and
 - 1.3.4 all Goods supplied by Swinnock Industries Ltd and further identified in any invoice issued by Swinnock Industries Ltd to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by Swinnock Industries Ltd or that are stored by the Client in a manner that enables them to be identified as having been supplied by Swinnock Industries Ltd; and
 - 1.3. all of the Client's present and after-acquired Goods that Swinnock Industries Ltd has performed work on or to or in which goods or materials supplied or financed by Swinnock Industries Ltd have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
 - 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by Swinnock Industries Ltd to the Client and shall include without limitation the design, importing, manufacture, exporting, supply, installation, repair and maintenance of pneumatic tyred wheels, castors, conveyors, materials handling equipment and all other associated products and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by Swinnock Industries Ltd to the Client.
 - 1.5 "Price" shall mean the cost of the Goods and Services as agreed between Swinnock Industries Ltd and the Client and includes all disbursements eg charges Swinnock Industries Ltd pay to others on the Client's behalf subject to clause 4 of this contract.
- 2. ACCEPTANCE**
 - 2.1 Any instructions received by Swinnock Industries Ltd from the Client for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 3. COLLECTION AND USE OF INFORMATION**
 - 3.1 The Client authorises Swinnock Industries Ltd to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by Swinnock Industries Ltd to any other party.
 - 3.2 The Client authorises Swinnock Industries Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
 - 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.
- 4. PRICE**
 - 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by Swinnock Industries Ltd at the time of the contract.
 - 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of Swinnock Industries Ltd between the date of the contract and delivery of the Goods and Services.
- 5. PAYMENT**
 - 5.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
 - 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
 - 5.3 Any expenses, disbursements and legal costs incurred by Swinnock Industries Ltd in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
 - 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
 - 5.5 A deposit may be required.
- 6. QUOTATION**
 - 6.1 Where a quotation is given by Swinnock Industries Ltd for Goods and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Swinnock Industries Ltd reserves the right to alter the quotation because of circumstances beyond its control.
 - 6.2 Where Goods and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods and Services.
- 7. RISK**
 - 7.1 The Goods and Services remain at Swinnock Industries Ltd's risk until delivery to the Client.
 - 7.2 Delivery of Goods and Services shall be deemed complete when Swinnock Industries Ltd gives possession of the Goods and Services directly to the Client or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Client.
- 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**
 - 8.1 Title in any Goods and Services supplied by Swinnock Industries Ltd passes to the Client only when the Client has made payment in full for all Goods and Services provided by Swinnock Industries Ltd and of all other sums due to Swinnock Industries Ltd by the Client on any account whatsoever. Until all sums due to Swinnock Industries Ltd by the Client have been paid in full, Swinnock Industries Ltd has a security interest in all Goods and Services.
 - 8.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods and Services shall remain with Swinnock Industries Ltd until the Client has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to Swinnock Industries Ltd as security for the full satisfaction by the Client of the full amount owing between Swinnock Industries Ltd and Client.
 - 8.3 The Client gives irrevocable authority to Swinnock Industries Ltd to enter any premises occupied by the Client or on which Goods and Services are situated at any reasonable time after default by the Client or before default if Swinnock Industries Ltd believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Swinnock Industries Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Swinnock Industries Ltd may either resell any repossessed Goods and Services and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Client's account with the invoice value thereof less such sum as Swinnock Industries Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9. PAYMENT ALLOCATION**
 - 9.1 Swinnock Industries Ltd may in its discretion allocate any payment received from the Client towards any invoice that Swinnock Industries Ltd determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by Swinnock Industries Ltd, payment shall be deemed to be allocated in such manner as preserves the maximum value of Swinnock Industries Ltd's purchase money security interest in the Goods and Services.
- 10. GENERAL LIEN**
 - 10.1 The Client agrees that Swinnock Industries Ltd may exercise a general lien against any Goods and Services or property belonging to the Client that is in the possession of Swinnock Industries Ltd for all sums outstanding under this contract and any other contract to which the Client and Swinnock Industries Ltd are parties.
 - 10.2 If the lien is not satisfied within seven (7) days of the due date Swinnock Industries Ltd may, having given notice of the lien at its option either:
 - 10.2.1 Remove such Goods and Services and store them in such a place and in such a manner as Swinnock Industries Ltd shall think fit and proper and at the risk and expense of the Client; or
 - 10.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds n or towards discharge of the lien and costs of sale without being liable to any person for damage caused.
- 11. DISPUTES AND RETURN OF GOODS**
 - 11.1 No claim relating to the Goods and Services will be considered unless made within seven (7) days of delivery.
 - 11.2 No Goods will be accepted for return without the prior consent of Swinnock Industries Ltd.
- 12. LIABILITY**
 - 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Swinnock Industries Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Swinnock Industries Ltd, Swinnock Industries Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
 - 12.2 Except as otherwise provided by clause 12.1 Swinnock Industries Ltd shall not be liable for:
 - 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by Swinnock Industries Ltd to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by Swinnock Industries Ltd to the Client; and
 - 12.2.2 The Client shall indemnify Swinnock Industries Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Swinnock Industries Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Swinnock Industries Ltd its agents or employees in connection with the Goods and Services.
- 13. WARRANTY**
 - 13.1 Manufacturer's warranty applies where applicable.
- 14. COPYRIGHT AND INTELLECTUAL PROPERTY**
 - 14.1 Swinnock Industries Ltd, owns and has copyright in all designs, specifications, goods, products, documents and software produced by Swinnock Industries Ltd in connection with the Goods and Services provided pursuant to this contract and the client may use the Goods and Services only if paid for in full and for the purpose for which they were intended and supplied by Swinnock Industries Ltd.
- 15. CONSUMER GUARANTEES ACT**
 - 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods and Services from Swinnock Industries Ltd for the purposes of a business in terms of section 2 and 43 of that Act.
- 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
 - 16.1 If the Client is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Swinnock Industries Ltd agreeing to supply Goods and Services and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Swinnock Industries Ltd the payment of any and all monies now or hereafter owed by the Client to Swinnock Industries Ltd and indemnify Swinnock Industries Ltd against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 17. MISCELLANEOUS**
 - 17.1 Swinnock Industries Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
 - 17.2 Failure by Swinnock Industries Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Swinnock Industries Ltd has under this contract.
 - 17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.