



Postal Address: M138, Private Bag 300987, Albany, North Shore City, 0752
Ph: 09 414 4238 **Fax:** 09 414 4239
Website: www.swd.co.nz
Please fax all sheets back.

Credit Account Application Form and Terms and Conditions

Legal Name: _____
Trading Name: _____
Postal Address: _____ Postcode: _____
Delivery Address: _____
Postcode: _____
Email: _____
Phone: (0) _____ Fax: (0) _____ Mobile: (0) _____
Business Status: Sole Proprietor___ Partnership/Trust___ Incorporated Company___
Other: _____
Established: _____ No. of Employees: _____ Company Number: _____
Brief Description of Business: _____
Accounts Department Contact Name: _____ Estimated Monthly Credit Required: \$ _____
Phone: (0) _____ Fax: (0) _____ Email: _____
Purchasing Contact Name: _____ Back orders Excepted: Y/N
Upon activation of this account, please activate online account: Y/N
Online Administrators Contact Name: _____ Email: _____
Directors'/Partners' or Sole Traders' Names, Residential Addresses and Dates of Birth:
Name: _____ Date of Birth: _____
Residential Address: _____
Name: _____ Date of Birth: _____
Residential Address: _____
Name: _____ Date of Birth: _____
Residential Address: _____
Accountant Name: _____
Address: _____ Phone: (0) _____
Bank and Branch: _____ Bank and Branch Numbers: _____

Payment Terms: Payment of Account shall be made by the 20th of the month following the month in which the invoice was issued

CREDIT FACILITIES MAY BE WITHDRAWN ON OVERDUE ACCOUNTS AT THE COMPANY'S DISCRETION AND WITHOUT NOTICE.



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Trade References (from non-related/non-aligned businesses)

Name: (1) _____ Ph: (0) _____
(2) _____ Ph: (0) _____
(3) _____ Ph: (0) _____

I hereby apply to open a trading account with SWD Limited. I/We have already read and fully understand the Company's Terms and Conditions of Trading Agreement on Page 3 of this application and agree to abide by them.

Signature: *(Authorising Signatory Only)* _____ Name: _____
Position Held: _____ Date: _____

Guarantee

In consideration of SWD (including all its subsidiaries and brands) agreeing to supply

(Name/Address) _____

(the Customer)

With goods on credit, I/we hereby jointly agree with SWD as follows:

- *I/We hereby guarantee the due performance by the Customer of the terms and conditions attached hereto and I/we hereby guarantee to you the payment of any monies advanced by way of credit to the Customer.*
- *This agreement shall be a continuing guarantee to SWD for all debts whatsoever and whensoever contracted by the Customer with SWD, in respect of goods supplied to it.*
- *SWD shall be at liberty without notice to me/us at any time and without in any way discharging me/us from liability hereunder to grant time or other indulgence to the said Customer and to accept payment from the Customer in cash or by other means of negotiable instruments and to treat me/us in all respect as though I/we were jointly liable with it to SWD instead of being merely surety for it.*
- *In signing the Customer confirms that the terms and conditions overleaf form part of this application and that the Customer is bound by the terms and conditions.*

Date this: _____ Day of: _____ Year: _____

Signed: _____ Witness: _____

Printed Name of Guarantor: _____ Witness Occupation: _____

Position in Company: _____ Witness Address: _____

If the Guarantee is not signed, purchases cannot exceed \$500 (unless the customer is a publicly listed company.)



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SWD shall mean SWD Ltd. or any agent or employees thereof. **Customer** shall mean any person acting on or on behalf of and with the authority of the Customer or a person purchasing products or services from SWD. **Goods** shall mean all Goods and/or inventory supplied by SWD. **Goods and services** shall also mean all goods, products, services and advice provided by SWD to the customer and shall include without limitation, the creation, manufacture and supply of all products and all charges for labor, hire charges, insurance charges, or any fee or charge associated with the supply of goods and Services by SWD to the Customer. **Price** shall mean the cost of the Goods and Services as agreed between SWD and the Customer and includes all disbursements. **Security Interest** means security interest as defined in the Personal Property Security Act 1999.

This agreement applies to all SWD Sales of Goods contracts. Any order placed with SWD constitutes the Customers agreement to be bound by this agreement. Any additional or different terms stipulated by the Customer or stated in any communication with SWD (including an order) are hereby objected to and will not bind SWD unless agreed in writing.

No salesperson, representative or agent is authorized by SWD to give any guarantee, warranty or representation in addition to, or contrary to this agreement. In any event, receipt of goods by the Customer (or another as directed by the customer) upon delivery constitutes the Customer's agreement to be bound by this agreement.

1. PRICE AND PRICE VARIATION

1.1 Price prevailing at the time of delivery apply.

1.2 SWD shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variation in the cost to SWD of carrying out the whole or any part of the Contract arising from any of the following:

- (a) delays in delivery or installation if the Goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfill the obligations under the Contract or any action or inaction by the Customer or other circumstances beyond SWD control;
- (b) variation in the cost of SWD's acquiring the Goods, directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs, duties, taxes, existing tariff classifications or any variation in currency exchange rates;
- (c) variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
- (d) any correction of errors or omissions on the part of SWD or any of its representatives.
- (e) The Customer agrees to notify SWD of any claims for credit for pricing within 14 days of the date of the invoice.
- (f) SWD reserves the right to levy a service charge for all orders as advised from time to time.

2. ORDER NUMBER

2.1 SWD will endeavor to include on invoices, all order numbers and names advised to SWD at the time of the order by the Customer as proof of order. However, if false or incorrect order numbers are advised to SWD by the Customer's staff members, the Customer will remain responsible for the payment of those orders.

3. GST

3.1 All Goods sold, except for export outside New Zealand, are subject to Goods and Service Tax.

4. Payment

4.1 Unless otherwise agreed in writing, the purchase price shall be paid to SWD at it's address by the 20th of the month following the month in which the invoice was dated.

4.2 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 4.1. Payment of the disputed portion may be withheld, provided the matter is brought to SWD's attention immediately it is discovered and a letter of explanation setting out the particulars is sent to SWD within 7 days of the dispute arising.

4.3 SWD reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered by the Customer.

4.4 Interest may be charged on overdue accounts at such rate as may be charged by SWD from time to time.

4.5 Any expenses, costs or disbursements incurred by SWD in recovering any outstanding monies, including debt collection agency fees or solicitors costs, shall be paid by the Customer.

5. DELIVERY

5.1 SWD shall deliver the Goods to the address stated on the Order or as agreed by SWD in writing.

5.2 SWD shall deliver the Goods by such carrier and such form of transport by SWD considers being appropriate.

5.3 Where the Customer specifies the carrier and the means of carriage, SWD shall deliver the Goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the Goods.

5.4 SWD will not be responsible for any part delivery or delay in delivery of the Goods as a result of events occurring beyond SWD's control. SWD shall not be in anyway responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

5.5 The Customer agrees to inform SWD within 14 days of the date of the invoice when proof of delivery is required. After this period, no liability will lie with SWD for proof of delivery and any costs procuring the POD are payable by the Customer.

5.6 The Customer agrees to inform SWD within 14 days of any short supplies or misshipments. After this period no liability will lie with SWD to investigate the claim. Credit approval will be subject to SWD investigation.



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6. PRIVACY ACT 1993

6.1 The Customer authorizes SWD to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes:

- (a) assessing the Customer's creditworthiness;
- (b) disclosing to a third party details of this application and any subsequent dealings it may have with SWD for the purpose of recovering amounts payable by the Customer and providing credit references;
- (c) marketing goods and services provided by SWD.

6.2 The Customer, if an individual, has a right of access to information about the Customer held by SWD. The Customer may request correction of that information and may require that the request be stored with that information. SWD may charge reasonable costs for providing access to that information.

7. INTELLECTUAL PROPERTY

7.1 Where SWD has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify SWD against all damages, penalties, costs and expenses of SWD or in respect of which SWD may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.

7.2 Should SWD be required to match any shade or colour a light and dark tolerance shall be allowed to such an extent as shall be agreed by SWD and the Customer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

7.3 Where the Customer supplies a mould, die, tool, printing plate or any other item used in the manufacturing the Customer shall reimburse SWD for all maintenance expenses. SWD shall not be liable for any loss or damage to moulds, dies, tools or materials supplied by the Customer to SWD for the purposes of fulfilling any contract.

7.4 Printing plates, stereotypes, film, artwork and all of the equipment for specific use in the manufacture of the goods (other than those supplied by the Customer) remain the property of SWD unless the cost thereof (including all development and costs relating thereto) shall have been fully recovered by SWD from the Customer in the costing of the goods already paid for by the Customer.

7.5 All information prepared by SWD including, without limitation, customized pricing, proposals, electronic catalogues, details of improvements and cost reductions, is the intellectual property of SWD and cannot be copied, altered or distributed without SWD's prior written consent. SWD will not be liable for any alterations made by the Customer.

8. RETURN OF GOODS

8.1 SWD will not accept the return of Goods for credit or any other purpose unless accompanied by a SWD Return Authorization Number (RA No.). An RA No. only authorizes the return of Goods and does not constitute any agreement to credit. Return of Goods will only be accepted for credit within 14 days of delivery. Return freight will be at SWD's cost only when error is on the part of SWD.

8.2 No Goods shall be accepted by SWD (even if SWD agree to do so) if:

- (a) they have been tampered with by the Customer or any other person and are not as new;
- (b) if they are not accompanied by the RA No. referred to in Condition 8.1.

8.3 Where goods are returned to SWD as above, they shall be returned to the Customer at the Customer's expense.

8.4 Receipt by SWD or by any SWD agents or representative of any Goods returned other than in accordance with Conditions 8.1 and 8.2 shall not constitute nor be deemed to constitute acceptance of the return of the Goods for credit or any other purpose.

9. RISK

9.1 Risk in the Goods shall pass to the Customer at the time when SWD's obligations under the contract are deemed under Condition 5 to be completed.

9.2 No liability for consequential loss or damage which may arise from the use of the goods sold for any purpose whatsoever will be accepted.

10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

10.1 Title in any Goods supplied by SWD to the Customer passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by SWD and of all other sums due to SWD by the Customer in any account whatsoever. Until all sums due to SWD by the Customer (Indebtedness) have been paid in full, the Customer grants SWD a security interest (Security Interest) in all Goods supplied by SWD to the Customer, and any proceeds of such Goods, and, where the Goods and/or their proceeds are not readily identifiable or traceable or their recoverable value is insufficient to pay the Indebtedness, all the Customer's present and after-acquired property that SWD has performed services on or to or in which goods or materials supplies or financed by SWD have been attached or incorporated; to the extent required to secure the Indebtedness.

10.2 SWD shall be entitled to register a Financing Statement on the Personal Property Securities Register (PPSR) over the Customer in respect of its Security Interest. As and when required by SWD, the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable SWD to register the Financing Statement or a Financing Change Statement and generally to obtain, maintain, register and enforce SWD's Security Interest in accordance with the Personal Property Securities Act 1999 (PPSA).

10.3 The Customer shall not change its name without first notifying SWD of the new name not less than 7 days before the name change takes effect.



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- 10.4 The Customer waives its right under section 148 of the PPSA to receive a copy of the verification statement relating to the registration of the Financing Statement.
- 10.5 Until the customer has paid all amounts owing to SWD the Customer shall ensure at all times that:
- (a) the goods supplied by SWD, while in the Customer's possession, can be readily identified and distinguished; and/or
 - (b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the Goods, are readily identifiable and traceable.
- 10.6 Where the Goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the Goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all amounts owing to SWD, the Customer shall not sell or grant a Security Interest in the goods without SWD's written consent.
- 10.7 Any cost incurred by SWD in exercise of the powers hereunder, whether relating to registration of security interest, repossession, storage or resale of goods supplied (including legal costs between solicitor and their client) shall be immediately due on demand and payable by the Customer to SWD.
- 10.8 SWD reserves the right to take possession of the secured Goods as defined in Section 16 of the Personal Property Securities Act, 1999.
- 10.9 If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly proved by the Customer or any third party, title in the Goods shall remain with SWD until the Customer has made payment for all Goods and Services, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods, shall be deemed to be assigned to SWD as security for the full satisfaction by the Customer of the full amount owing between SWD and the Customer.
- 10.10 The Customer gives irrevocable authority to SWD to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if SWD believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. SWD shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor in contract or otherwise in any way whatsoever. SWD may either resell any repossessed Goods and credit the Customer's account the net proceeds of sale after deductions of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as SWD reasonably determines on account of wear and tear depreciation, obsolescence, loss of profit and costs.
- 10.11 Where Goods are retained by SWD pursuant to clause 10.10, the Customer waives the right to receive notice under Section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under Section 121 of the PPSA.
- 10.12 The following shall constitute defaults by the Customer:
- (a) Non payment of any sum by the due date.
 - (b) The Customer intimates that it will not pay any sum by the due date.
 - (c) Any Goods are seized by any other creditor of the Customer or any other creditors intimates that it intends to seize Goods.
 - (d) Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to SWD remains unpaid.
 - (e) The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a No Asset Procedure or a Voluntary Administration is entered into or a landlord detains against any of the Customer's assets.
 - (f) A Court judgment is entered against the Customer and remains unsatisfied for 7 (seven) days.
 - (g) Any material adverse change in the financial condition of the Customer.
- 10.13 If the Credit Repossession Act applies to any transaction between the Customer, and SWD, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.
- 11 PAYMENT ALLOCATION**
- 11.1 SWD may in its discretion, allocate any payment received from the Customer towards any invoice that SWD determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by SWD, payment shall be deemed to be allocated in such manner as preserves the maximum value of SWD's Security Interest in the Goods.
- 12 GUARANTEED**
- 12.1 Where the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees 1993 applies to this contract:
- (a) If any of the Goods fail to comply with any guarantee in the Consumer Guarantees Act, SWD will repair or replace these Goods.
 - (b) Without excluding SWD's obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that SWD does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by SWD in writing.
 - (c) If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply.
 - (d) If the Customer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.



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- (e) If the Customer supplies the Goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the Goods without SWD's prior approval in writing, and the customer must give the person buying the Goods such product information relating to the Goods as SWD required and the Customer agrees to indemnify SWD against any liability or cost incurred by SWD under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.
- 12.2 The following terms apply whenever the Consumer Guarantees Act 1993 does not apply to this contract where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- (a) Defective Goods or Goods which do not comply with the contract may at SWD's discretion be repaired or replaced, or the price refunded.
- (b) Any right which the Customer may have to return non-conforming or defective Goods will only be effective if:
- (i) The Customer notifies SWD in writing within fourteen days following delivery and SWD is given the opportunity to inspect the goods and
- (ii) the Goods are returned unused, re-saleable and/or in the condition the Customer received them.
- (c) SWD will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
- (d) SWD accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
- (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise, or
- (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by SWD in writing, or
- (iii) Any service forming part of the supply of the Goods which have been performed by any third party and the Customer agrees to indemnify SWD against any such claim.
- (e) In any event, SWD's liability under any claim shall not exceed the price of the Goods.
- 12.3 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.
- 13 NEW ACCOUNT**
- 13.1 Use of this account shall constitute acceptance of the agreement.
- 13.2 The Customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer has on discovering the fraudulent use of the account immediately notified the Credit Manager (or the nearest branch of SWD) of such fraudulent use. The burden of proving such use was fraudulent shall be upon the Customer.
- 13.3 The Customer shall Endeavour to return all goods acquired by fraudulent use.
- 13.4 The Customer agrees that the Customer will spent more that \$75.00 a month to keep the account active, failing to do so SWD has the right to close the account without notification.
- 13.5 The Customer agrees that any transaction below \$20.00 will be charged a processing fee of \$2.50.
- 14 VARIATIONS TO TERMS AND CONDITIONS OF TRADE**
- 14.1 SWD may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer provided that SWD shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 10.1 without the written agreement of the Customer.
- 15 ONLINE ACCOUNT**
- Upon activation of the online account,
- 15.1 SWD agrees to notify the Customer Online Account Administration (via email) of login details.
- 15.2 The Customer Online Account Administrator is responsible for ensuring that all user details are kept up to date.
- 15.3 The Customer agrees to abide by site term and conditions as described on the website. Site terms and conditions are subject to change without notice.
- 16 GOVERNING LAW**
- 16.1 This agreement is governed by the laws of New Zealand.
- 16.2 SWD and the Customer shall submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.
- 17 MISCELLANEOUS**
- 17.1 For the avoidance of doubt, this agreement, if faxed, is acknowledge as a legal document.

Customer Signature: _____

Date: _____

SWD Limited – April 2010

**Unit 1, 3 William Pickering Drive
Albany
North shore**