

APPLICATION FOR CREDIT

COMPANY NAME: _____ COMPANY NO: _____

TRADING NAME: _____

POSTAL ADDRESS: _____ POST CODE: _____

DELIVERY ADDRESS: _____

TELEPHONE: _____ FAX: _____

DETAILS OF COMPANY: PUBLIC PRIVATE PARTNERSHIP SOLE TRADING LTD

TYPE OF BUSINESS: _____ ESTABLISHED FOR _____ YEARS

EXPECTED MONTHLY PURCHASE: (Important must fill in) \$ _____

Minimum spend of \$350 per month due to administration costs.

Email address for account contact: _____

Email address for purchase contact: _____

NAME AND ADDRESS OF DIRECTORS OR PROPRIETORS: FULL NAME PRIVATE ADDRESS PHONE NO DATE OF BIRTH

- 1.
- 2.
- 3.

I/We authorize any person or company to provide you with such information as you may require in response to your credit enquiries.

ACCOUNTANT'S NAME AND ADDRESS: _____

In consideration of BJ Ball Limited t/a Caspak Products opening a credit account for me/us: I/we agree that in the event I/we do not pay to BJ Ball Limited t/a Caspak Products all monies owing after the 20th of the month following the invoice month date, BJ Ball Limited t/a Caspak Products may charge interest on those monies at a rate of 1.5% per calendar month for the time being calculated from the due date for payment until the actual payment in full. I/we agree to pay BJ Ball Limited t/a Caspak Products all interest charged, and to pay all BJ Ball Limited t/a Caspak Products costs (including legal and debt recovery costs and fees) incurred in recovering monies which I/we may owe to BJ Ball Limited t/a Caspak Products.

TRADE REFERENCES: I/we authorize any person or company to provide you with such information as you may require in response to your credit enquiries.

1. _____ PH: _____ COMMENT: _____

2. _____ PH: _____ COMMENT: _____

3. _____ PH: _____ COMMENT: _____

Do you have authorisation to open an account in the name of this Company? YES NO

APPLICANTS SIGNATURE AUTHORISED BY THE COMPANY: _____

NAME OF SIGNATORY: _____

DATE: _____ POSITION HELD: _____

Definitions

- 1.1 **"Company"** shall mean **BJ BALL LIMITED T/A CASPAK PRODUCTS**, or any agents, employees, successors or assigns thereof.
- 1.2 **"Customer"** shall mean the entity or person (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy either Goods or Services. If the Customer includes two or more persons, those persons' liability is joint and several.
- 1.3 **"Goods"** shall mean any Goods supplied by the Company to the Customer and where the context so permits shall include any supply of Services as hereinafter defined.
- 1.4 **"Guarantor/s"** shall mean the entity or person that irrevocably guarantees payment of all moneys which may at any time be owing to the Company by the Customer, and who indemnifies the Company against any loss it may suffer in connection with the provision of credit to the Customer.
- 1.5 **"Services"** shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 **"PPSA"** shall mean the Personal Properties Securities Act 1999.
- 1.7 **"Price"** shall mean the cost of the Goods and Services as determined by the Company and any other amounts owing to the Company by the Customer.
- 1.8 **"Order"** means an agreement between the Company and the Customer to supply Goods and Services to the Customer.
- 1.9 **"Quote"** means a written offer from the Company to the Customer to supply Goods and Services for a specified Price and subject to these terms and conditions (which shall be paramount) along with any terms and conditions contained in any such offer.
2. **General**
- 2.1 If any provision of this contract shall be invalid or unenforceable the enforceability of the remaining provisions shall not be affected.
- 2.2 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Company.
- 2.3 The Company may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of the Company.
- 2.4 The Company may assign or transfer all or any part of its rights or obligations under this contract without the Customer's consent or the consent of the Guarantor.
- 2.5 The Company's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Company's rights to exercise or enforce such rights or any other rights in the future.
- 2.6 The Company may vary or replace this contract and it will be a condition of the Company continuing to supply Goods to the Customer that the Customer agrees to sign any variation or replacement of this contract.
- 2.7 Any waiver of these terms and conditions by the Company must be made in writing.
- 2.8 The Customer may not assign all or any of the Customer's rights or obligations under this contract without the written permission of the Company.
- 2.9 The Company shall not be bound by any error or omission made by the Company on any invoice, quotation, estimate, or any other document issued by the Company.
- 2.10 The Customer shall notify the Company of any intention to cease trading or of any change in the Customers name, and/or contact details by giving at least seven (7) days' notice in writing prior to any such events taking effect.

3. Acceptance

- 3.1 Any instructions received by the Company from the Customer for the supply of Goods and Services shall constitute acceptance of this contract.
- 3.2 The Company will only supply Goods and Services on these terms and conditions unless agreed otherwise in writing.
- 3.3 These terms and conditions along with invoices, credit application, quotations, estimates, Order forms, or any other documents issued by the Company together form the contract and are the full agreement between the parties.

4. Quotations & Orders

- 4.1 Where a Quote is given for the Price then:
- all Quotes are based on rates and charges in effect at the date of the relevant Quote and are binding until (unless otherwise specified) 5pm of the date of the Quote. Any increases in rates and charges, including but not limited to increases due to exchange rate fluctuation, shall result in an equivalent increase in the Quote; and
 - where Goods or Services are required in addition to the Quote then the Customer agrees to pay the Price in effect at the date of the request for additional Goods or Services; and
 - The Company reserves the right to amend or increase the Price in the event of circumstances beyond the Company's control (including but not limited to exchange rate fluctuations).
 - The Company, in its sole discretion reserves the right to decline, in whole or part, any Order.

5. Consumer Guarantees Act 1993 & Fair Trading Act 1986

- 5.1 Where Goods are supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 shall not apply. Where the Customer purchases Goods for re-supply, the Customer's contract must contain an equivalent provision to this clause.
- 5.2 Nothing in this contract is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 except to the extent permitted by statute.

6. Price

- 6.1 The Company may require a **deposit** of up to one hundred percent (100%) of the Price upon placement of an Order for the Goods.
- 6.2 The Price of the Goods shall be either:
- as shown on the Company invoice; or
 - stipulated (subject to clause 4.1) in the quote.
- 6.3 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs which are payable by the Customer in addition to the Price.
7. **Payment**
- 7.1 Unless otherwise agreed to in writing by the Company, payment of any invoice shall be due on the 20th day of the month following the date on which an invoice is issued to the Customer.
- 7.2 Payment may be made by direct deposit to the Company nominated bank account.
- 7.3 The Company has the right to apply any payment to any account of the Customer. Should the Customer have a number of accounts, then the Company is hereby given the right to combine any account and also set-off any amount between such accounts.
- 7.4 All payments by the Customer must be made in full and without any deduction or right of set-off or counterclaim. The Customer agrees, however, that any monies that the Company may owe the Customer on any account whatsoever may, at the

- Company's option, be set-off against payments due by the Customer to the Company.
- 7.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 7.6 The Customer must give the Company written notice within 5 working days of receiving an invoice if the Customer believes that the invoice is not correct. The notice must include full details of the error(s) claimed by the Customer. If the Customer has not given the Company valid notice of the error(s) within 5 working days of receiving the invoice, the Customer agrees to treat the invoice as correct, and must pay the amount due on the due date. If an invoice is disputed and that dispute cannot be immediately resolved, the Company can withhold or defer any future delivery of Goods or provision of Services pending resolution or may part-deliver having regard to the undisputed component. Once the dispute is resolved, the Customer must pay the Company within 3 working days, the resolved amount due. Time is of the essence in respect of the Customer's payment obligations to the Company.
- 7.7 The parties agree that the Customer has a monthly credit limit, as determined by the Company, in its sole discretion. Once the Customer has exceeded this monthly credit limit, the Customer agrees to make 100% payment to the Company at the time of placing an Order.
- 8. Default**
- 8.1 Without prejudice to any other rights or remedies that the Company may have against the Customer, the Customer agrees that in the event of default in payment (by the Customer) then the Customer agrees to pay on demand;
- a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Company in recovering any amounts payable by the Customer; and
 - b) interest on the amount outstanding at the end of each month in which the Customer's account is in arrears at the rate of one and a half percent (1.5%) per month (compounding) with such a rate after as well as before any judgement; and
 - c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Customer's account is in default; and
 - d) any costs incurred by the Company for storage of Goods; and
 - e) Any losses or damages which may be incurred by the Company due to non-performance of any relevant contracts held with third party suppliers.
- 8.2 The Company shall, in its sole discretion, determine whether the Customer is in default of payment. For the avoidance of doubt, the Customer is in default on the day following the date by which the invoice was due for full payment.
- 8.3 The Company may at any time, by notice to the Customer, declare all or any part of the money's owing to the Company to be due and payable immediately, upon demand or at a later date as the Company may specify.
- 8.4 The Company may in its sole discretion stop further performance of this contract, require payment before further performance, debit any other account the Customer may have to pay the sum owing, retain any deposit paid by the Customer (which shall be forfeited by the Customer) or terminate this contract without notice to the Customer upon the happening of any of the following events:
- a) the Customer makes default in payment due under this contract or in payment of any moneys due by the Customer to the Company on any account whatsoever; or
 - b) the Customer is insolvent or takes any proceedings to reschedule any indebtedness; or
 - c) in the Company's opinion the Customer is unable to pay indebtedness as it falls due; or
 - d) a receiver or manager is appointed to any property of the Customer.
- 8.5 In the event that the Company terminates this contract under clause 8.4, the Company is also entitled to recover any losses or damages which may be incurred by the Company due to non-performance of any relevant contracts held with any third party suppliers.
- 8.6 In the event of default by a Customer who has provided a Guarantor, the Company may demand payment from the Guarantor, of all money's owing to the Company by the Customer, and recover any loss the Company may or will suffer in connection with the provision of credit to the Customer. For the avoidance of doubt, the Company may take proceedings against the Guarantor before taking proceedings against the Customer.
- 9. Privacy Act**
- 9.1 The Customer and Guarantor under this contract acknowledges that personal information collected or held by the Company is provided and may be held, used and disclosed for the following purposes:
- a) administering, whether directly or indirectly, the Company's contracts and enforcing the Company's rights thereunder; and
 - b) marketing Goods provided by the Company; and
 - c) ascertaining at any time the Customer and Guarantor's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
 - d) enabling the Company to notify any credit agency of any application for credit or default on any obligation of the Customer and the Guarantor; and
 - e) enabling the Company to communicate with the Customer and Guarantor for any purpose.
- 9.2 Where the Customer or Guarantor is an individual the authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 9.3 The Customer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Company.
- 9.4 The Customer and Guarantor must notify the Company of any change in circumstance that may affect the accuracy of the information provided to the Company.
- 10. Delivery**
- 10.1 Delivery of the Goods shall be deemed to be completed when:
- a) The Company or the Company's agent, gives possession of the Goods directly to the Customer, or
 - b) Possession of the Goods is given to a carrier, courier or other Bailee for the purpose of transmission to the Customer.
- 10.2 Unless otherwise stated the costs of delivery shall be ex store and paid by the Customer in addition to the Price.
- 10.3 Where the Customer does not take delivery of the Goods by the delivery date specified the Customer shall:
- a) pay a redelivery fee; and
 - b) pay storage costs for the Goods until such time as the Customer accepts the Goods.
- 10.4 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.
- 10.5 In the event that the Company's third party suppliers are unable to supply Goods to the Company or directly to the Customer, the parties agree that delivery shall be postponed until the third party suppliers can resupply. If delivery is

expected to be postponed for longer than 5 working days, the Company shall reissue the invoice to the Customer extending the payment due date by the length of postponement. This clause shall apply without prejudice to the Company and shall not, in any way affect the Company's rights, remedies and limitation of liability, under this agreement with the Customer.

11. Defects and Shortages

11.1 Any claim by the Customer as to incorrect performance or breach of this contract must be made to the Company in writing within five (5) working days of delivery (time being of the essence) of the Goods otherwise the Company shall be entitled to presume that the Goods have been delivered in good Order and without defect or shortage in quantity.

11.2 In the event the Company agrees that the Goods have not been delivered in good Order, or with defect or shortage in quantity then the Company's liability shall be limited to replacement of the Goods.

12. Warranty

12.1 In the event that any Goods are not manufactured by the Company then the Customer shall only have the benefit of the warranty (if any) provided by the manufacturer.

12.2 To the extent permitted by statute the Company excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, under any other legal principle, or otherwise in connection with Goods or Services.

12.3 The Customer is solely liable to ensure that the Goods as Ordered are fit and suitable for the purpose for which they are intended and of merchantable quality.

13. Risk

13.1 Risk in the Goods shall pass from the Company to the Customer upon delivery of the Goods.

13.2 The Company assumes product risk during shipping and Delivery unless otherwise stated by the Company to the Customer prior to shipping and Delivery.

14. Title

14.1 Property and ownership in the Goods will not pass to the Customer, but will remain with the Company until payment in full of the Price.

14.2 The Customer shall, at the request of the Company assign payment of proceeds directly from the Customer's debtor to the Company for any amounts outstanding following the sale of Goods whether intermingled or not.

14.3 Until property in the Goods passes to the Customer:

- a) the Customer shall hold the Goods as fiduciary bailee and agent for the Company; and
- b) The Company shall have a right of lien over any Goods, whether or not those Goods have been paid for by the Customer. Such rights shall be additional to the Company's rights referred to herein; and
- c) The Company shall be entitled to enter upon the Customer's premises to inspect the Goods; and
- d) the Goods shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices issued by the Company to the Customer; and
- e) the Customer acknowledges that if it mixes the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and Company shall be owners in common of the new product or item; and
- f) the proceeds for the sale of any Goods shall be kept in a separate account and held in trust to the sole benefit of the Company; and

- g) if the Customer is in default of payment then the Customer shall deliver the Goods to the Company upon demand and in the event the Customer does not comply with such a demand then the Company shall be entitled to enter upon the Customer's premises at any time and do all things necessary in order to take possession of the Goods. The Customer shall be liable for all costs of whatsoever nature associated with the exercise of the Company's rights under this clause.

15. Personal Property Security Act 1999 ("PPSA")

15.1 The Customer acknowledges that this contract creates a security interest in the Goods, and any debt owing to the Customer arising from the subsequent sale of those Goods by the Customer, and or any monies received from such sale as security for payment of all monies owing to the Company, relating in any way to Goods supplied under these terms, which the Company register on the Personal Property Security Register. The Customer will, if requested by the Company, sign any documents, provide all necessary information and do anything else required by the Company to ensure that the security interest is a perfected purchase money security interest.

15.2 Until payment of the Price has been made in full the Customer acknowledges and agrees that in relation to Goods that are inventory, the Customer will not allow any non-purchase money security interest to arise in respect of the Goods unless the Company has perfected its purchase money security interest prior to the Customer taking possession of the Goods.

15.3 On being requested by the Company, the Customer shall promptly do all things (including signing any document) and provide all information necessary to enable the Company to perfect and maintain the perfection of any and each security interest granted to it by the Customer (including by registration of a Financing Statement.)

15.4 The Company and the Customer agree that nothing in sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA shall apply to these terms and conditions.

15.5 The Customer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

15.6 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

15.7 To the extent permitted by law, the parties agree that if the Customer defaults in payment, or defaults under any condition or obligation under this agreement each security interest created in favour of the Company will become immediately enforceable.

16. Limitation of Liability

16.1 In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or impose obligation on the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on the Company, its 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.

16.2 The Customer acknowledges and understands that the Company is unable to guarantee supply of all or any of the Goods to be supplied and that it shall not be liable to the Customer, or to any other person, for any loss or damage caused by any delay in delivery however that delay is caused.

16.3 Except as provided for by clause 16.1, the Company shall not be liable towards the Customer (whether incurred by the Customer or another person) for any loss or damage of any

kind (arising directly or indirectly from Goods or Services), however caused. For the sake of clarity, this includes but is not limited to: loss and damage caused by failure, inaccurate advice or recommendations, abuse, lack of maintenance, unintended use, unqualified use, unauthorized use or modification and over extended use of the Goods.

- 16.4 To the extent permitted by statute if the Company is ever liable to the Customer, or any other person, and it cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Company's liability is in all cases limited to either replacement of the Goods or in the sole discretion of the Company, A refund of the purchase Price of the Goods or the fee paid for the Services giving rise to such claim.
- 16.5 Neither party shall be deemed in default of this contract to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
- 16.6 The Customer hereby disclaims any right to rescind, or cancel any contract with the Company, or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment and not as a result of any inducement, representation or promise made by the Company.
- 16.7 The Customer shall indemnify the Company against all claims, and loss of any kind whatsoever however caused or arising in connection with the Goods or Services.
- 17. Cancellation**
- 17.1 To end the contract, the Customer must give the Company a signed notice stating that the Customer is ending the contract under this clause and giving the details of why the contract is being ended.
- 17.2 If a contract is ended under this clause, the Company is entitled to recover the Price for any Goods ordered but not yet delivered, any Services provided and any losses or damages which may be incurred by the Company due to non-performance of any relevant contracts held with third party suppliers as at the date the contract is ended.
- 18. Returned Goods**
- 18.1 No goods will be accepted for return unless by prior arrangement with the Company. Such arrangement will need to be confirmed in writing by the Company.
- 18.2 Unless the Goods have been returned as a result of an error in supply by the Company and are returned within 14 days of the invoice date in the original condition in which the Goods were delivered, the Company reserves the right to:
- a) require the Customer to pay any return freight charge;
 - b) deduct a 15% restocking fee to cover the cost of repackaging and/or repair and documentation;
 - c) reject a return where the Goods have been made specifically to the Customers specification;
 - d) reject a return where Goods have been damaged and are not able to be repaired to a resalable condition; and
 - e) reject unless the Customer can provide adequate proof of purchase from the Company.
- 18.3 All copyright, patent and intellectual property of any designs, drawings, specifications, sketches, or samples provided by the Company shall remain the property of the Company and shall only be used by the Customer for the use for which they were intended or supplied.
- 18.4 Where the Company has followed a design or instruction furnished by, or given by the Customer, then the Customer shall indemnify the Company against all damages, penalties and costs of the Company or in respect of which the Company may become liable through any work required to be done in accordance with such instructions involving an infringement of a patent, trademark, registered design or common law right.
- 19. Dispute**
- 19.1 For disputes arising between the parties under this contract where the Price is within the limits of the jurisdiction of the Disputes Tribunal the Customer expressly acknowledges and agrees that this contract may be taken as agreement that both parties consent for the dispute to be referred to the Disputes Tribunal for resolution.
- 19.2 For disputes arising between the parties under this contract where the Price exceeds the limits of the jurisdiction of the Disputes Tribunal the parties agree that before referring the dispute to a third party a period of no less than four (4) weeks shall pass to allow both parties time to attempt to negotiate or mediate an agreement. Failing an agreement acceptable to both parties being formed such disputes will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by the Arbitrators Institute of New Zealand council). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.
- 20. General**
- 20.1 If there is any inconsistency between these terms and conditions and any Order submitted by the Customer, or any other arrangement between the parties, these terms and conditions shall prevail, unless otherwise agreed in writing by the parties.
- 20.2 The Customer shall not approach any third party supplier for direct discounts, use the name of the Company or reveal the Company's trading terms and conditions in any attempt to obtain personal discounts.
- 20.3 In the event that either party is prevented in whole or in material part from performing its obligations under this contract solely as a result of force majeure, upon giving prompt notice to the other party detailing such force majeure event and its anticipated duration, the obligations of the party so prevented shall be excused during such period of delay and such party shall take whatever reasonable steps necessary to relieve the effect of such cause as quickly as possible.