



400 Victoria Avenue, Whanganui 4500
Tele (06) 3477220 Free calling number 0800434287

ACCOUNT APPLICATION FORM

ENTITY DETAILS:

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

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

If trading under a name other than above please enter here - Trading as:

Postal Address:

Physical Address:

Telephone: Mobile: Email:.....

Contact Name & Position: Limit Requested:

DIRECTORS / PARTNERS / TRUSTEES: If a Company, Partnership or Trust please insert Directors / Partners / Trustees names in full

1:..... Address:

2:..... Address:

3:..... Address:

FINANCIAL & PROFESSIONAL ADVISORS:

Name of Accountant: Solicitor:

Bank: Branch:

| TRADE REFERENCES | | | |
|------------------|--------------|--------------|--------------------|
| Company | Contact Name | Phone Number | Account open since |
| | | | |
| | | | |

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 5Merchants 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 Customer by submitting this document. 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.

Signed Print Name Designation

Signed Print Name Designation

Dated this day of 20.....

1. DEFINITIONS

- 1.1 5Merchants is a brand of ecoBuild Developments Ltd.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from 5Merchants.
- 1.3 "Products" shall mean:
 - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by 5Merchants to the Customer; and
 - 1.3.2 all Products supplied by 5Merchants to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by 5Merchants and
 - 1.3.4 all Products supplied by 5Merchants and further identified in any invoice issued by 5Merchants to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by 5Merchants or that are stored by the Customer in a manner that enables them to be identified as having been supplied 5Merchants and
 - 1.3.6 all of the Customer's present and after-acquired Products that 5Merchants has performed work on or to or in which goods or materials supplied or financed by 5Merchants 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 "Products" shall also mean all goods, products, services and advice provided by 5Merchants to the Customer and shall include without limitation the supply and delivery of building products and the fixing and stopping of any Products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products by to 5Merchants to the Customer.
- 1.5 "Price" shall mean the cost of the Products as agreed between 5Merchants and the Customer and includes all disbursements e.g. charges 5Merchants pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by 5Merchants from the Customer for the supply of Products shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises 5Merchants to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products provided by 5Merchants to any other party.
- 3.2 The Customer authorises 5Merchants to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer 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 Products shall be deemed to be sold at the current amount as such Products are sold by 5Merchants 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 Products that is beyond the control of 5Merchants between the date of the contract and delivery of the Products.

5. PAYMENT

- 5.1 Payment for Products 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 1.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by 5Merchants in the enforcement of any rights contained in this contract shall be paid by the Customer, 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.

6. QUOTATION

- 6.1 Where a quotation is given by 5Merchants for Products:
 - 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; 5Merchants reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

7. RISK

- 7.1 The Products remain at 5Merchants risk until delivery to the Customer.
- 7.2 Delivery of Products shall be deemed complete when 5Merchants gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer. In the event of 5Merchants delivering the Products using their own transport then delivery is complete when the Products are given directly to the Customer or left by 5Merchants at the delivery site.
- 7.3 Any Products being installed by 5Merchants are at the Customer's risk when the Products are on site.
- 7.4 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to 5Merchants making time of the essence.

8. AGENCY

- 8.1 The Customer authorises 5Merchants to contract either as principal or agent for the provision of Products that are the matter of this contract.
- 8.2 Where 5Merchants enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

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

- 9.1 Title in any Products supplied by 5Merchants passes to the Customer only when the Customer has made payment in full for all Products provided by 5Merchants and of all other sums due to 5Merchants by the Customer on any account whatsoever. Until all sums due to 5Merchants by the Customer have been paid in full 5Merchants has a security interest in all Products. The Customer confirms and agrees that in consideration of 5Merchants extending credit or continuing to extend credit on the Products and any other goods supplied by 5Merchants pursuant to this contract or other contracts (the continuation of such credit being in the sole discretion of 5Merchants) and also to secure the performance and payment of any and all present and future obligations of the Customer to 5Merchants, the Customer hereby grants, charges, transfers, assigns and conveys a purchase money security interest to 5Merchants in and over the Products and any other goods supplied by 5Merchants pursuant to this contract or other contracts together with all proceeds derived directly from the disposal of the Products and any other goods supplied by 5Merchants pursuant to this contract or other contracts. The security interest created by this clause shall have priority over all other liens, encumbrances or security interests over the Products and any other goods supplied by 5Merchants pursuant to this contract or other contracts. For the avoidance of doubt, the collateral which is subject to the security interest created or provided for by this clause are all the Products supplied by 5Merchants to the Customer pursuant to this contract or other contracts that are owned by or in the possession of the Customer from the date of this contract and at anytime hereafter acquired by the Customer from 5Merchants and includes all related accessories, all additions and accessions thereto, and substitutions and parts therefore, and all the proceeds derived from the sale thereof including trade-in machinery or equipment, cash, notes, chattel paper or goods. The Customer further confirms and agrees that the Customer will not exercise any right of set-off (whatsoever and howsoever arising) against 5Merchants. Sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 shall not apply to this contract. The Customer waives all rights under sections 121, 125, 129, 131, 132 and 148 of the Personal Property Securities Act 1999.
- 9.2 Where the Customer has not paid for any Products in its possession property in such Products shall remain with 5Merchants and:
 - 9.2.1 The Products shall be held by the Customer as bailee; and
 - 9.2.2 Title in the Products shall remain with 5Merchants until the client has made payment for the Products.
- 9.3 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with 5Merchants until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to 5Merchants as security for the full satisfaction by the Customer of the full amount owing between 5Merchants and Customer.
- 9.4 The Customer gives irrevocable authority to 5Merchants to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if 5Merchants believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. 5Merchants 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 liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. 5Merchants may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as 5Merchants reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.5 Where Products are retained by 5Merchants pursuant to clause 9.4 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.6 The following shall constitute defaults by the Customer:
 - 9.6.1 Non payment of any sum by the due date.
 - 9.6.2 The Customer intimates that it will not pay any sum by the due date.
 - 9.6.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
 - 9.6.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to 5Merchants remains unpaid.
 - 9.6.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 9.6.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 9.6.7 Any material adverse change in the financial position of the Customer.
- 9.7 If the Credit Repossession Act applies to any transaction between the Customer and 5Merchants, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

10. PAYMENT ALLOCATION

- 10.1 5Merchants may in its discretion allocate any payment received from the Customer towards any invoice that 5Merchants 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 5Merchants, payment shall be deemed to be allocated in such manner as preserves the maximum value of 5Merchants's purchase money security interest in the Products.

11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon 5Merchants 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 5Merchants, 5Merchants'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.
- 11.2 Except as otherwise provided by clause 11.1 5Merchants shall not be liable for:
 - 11.2.1 Any loss, fault, negligence, omission, deficiency, or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer 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 Products provided by 5Merchants to the Customer; and
 - 11.2.2 The Customer shall indemnify 5Merchants against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of this clause whether caused or arising as a result of the negligence of 5Merchants or otherwise, brought by any person in connection with any matter, act, omission, or error by 5Merchants its agents or employees in connection with the Products.

12. WARRANTY

- 12.1 Manufacturer's warranty applies where applicable.

13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from 5Merchants for the purposes of a business in terms of section 2 and 43 of that Act.

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for 5Merchants agreeing to supply Products and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to 5Merchants the payment of any and all monies now or hereafter owed by the Customer to 5Merchants and indemnify 5Merchants against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. MISCELLANEOUS

- 15.1 5Merchants shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by 5Merchants 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 5Merchants has under this contract.
- 15.3 If any provision of this contract shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.4 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 15.5 In the event of 5Merchants and the Customer entering into any additional written arrangement with respect to the supply and/or installation of Products (and services) then if there is any conflict or variation between these terms and conditions of trade and the additional agreement then these terms and conditions of trade shall prevail.