

# ETECH NZ LTD

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## ACCOUNT APPLICATION FORM – TERMS OF TRADE

### ENTITY DETAILS:

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

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

Trading as: .....

Postal Address: ..... Email: .....

Nature of Business: ..... Years in Business: .....

Telephone: ..... Fax: .....

Delivery Address: ..... Contact Name & Position: .....

### If Sole Trader/Partnership (Insert full name (including middle name))

Full name: .....	Date of Birth: .....
Full name: .....	Date of Birth: .....

<b>IF LIMITED LIABILITY COMPANY -</b>	
Address of Registered Office: .....	
Date of Incorporation: .....	Incorporation No: .....
Company Bank Name: .....	Address: .....
Branch: .....	.....
Full name of Directors:	
1. ....	Address: .....
2. ....	Address: .....
3. ....	Address: .....

TRADE REFERENCES			
Company	Contact Name	Phone Number	Account open since

## ACCEPTANCE OF TERMS OF TRADE

I/We confirm that all information supplied is accurate and may be used (as provided in 16.1 of the Terms of Trade) to satisfy your credit enquiries or the collection of monies owing to you.

I/We have read, understood and agree to be bound by the Terms of Trade, as set out below, and understand and accept that the Terms of Trade will govern every order or confirmation of quotation we enter into with ETECH for the purchase of Goods and Services.

I/We assent to and acknowledge that the Terms of Trade provide for Retention of Title and grant to ETECH a Security Interest over all goods presently or in the future supplied to the Customer by ETECH including the proceeds of sale of all goods supplied until the purchase price of the goods and all amounts owing to ETECH are paid in full.

I/We warrant that I am/we (where applicable) are authorised to enter into this contract on behalf of the Company or Trust; and

As a Director/Trustee (where applicable) I/we personally unconditionally guarantee to pay on demand all amounts owing by the Customer in consideration of ETECH supplying the Goods and Services to the Customer.

Signature of ..... and .....

Full Names: (please print) ..... and .....

Date .....

### TERMS OF TRADE

#### 1. DEFINITIONS

- 1.1 "ETECH" shall mean Etech NZ Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods and Services from ETECH.
- 1.3 "Goods" shall mean:
  - (a) all goods supplied by ETECH to the Customer from time to time under the Contract; and
  - (b) all goods where described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by ETECH on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be assented to by the Customer and to be included in and form part of this Contract; and
  - (c) where the goods supplied are Inventory of the Customer, then all references to Goods shall, in respect of those goods, be read as references to Inventory for so long as they are held as Inventory; and
  - (d) unless the context requires otherwise, Goods shall include all proceeds of such goods and any objects, products or mass which the goods subsequently become part of.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by ETECH to the Customer, and shall include, without limitation, the design, manufacture, development, sale, installation, repair and maintenance of equipment, and the supply of componentry and parts, and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by ETECH to the Customer; and
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between ETECH and the Customer and includes all disbursements (e.g. charges) ETECH pay to others on the Customer's behalf pursuant to clause 4 of this contract.
- 1.6 PPSA shall mean the Personal Property Securities Act 1999.

#### 2. ACCEPTANCE

Any instructions received by ETECH from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

#### 3. PRICE

- 3.1 Unless otherwise stated, quotations and prices stipulated by ETECH are based on rates at the date of quotation for materials, transport, labour and other rates and charges. The price may be increased by the amount of any increase in any such items, or any other factors affecting the costs of production and/or delivery date due to circumstances beyond the control of ETECH, between the date of the quotation and the date of delivery. Unless otherwise stated GST will be an additional charge.
- 3.2 Where no price is stated in writing or agreed to orally, the Goods and Services shall be deemed to be sold at the same current value as such Goods and Services are sold by ETECH at the time of the Contract.
- 3.3 The price may be increased by the amount of any increase in the costs of supply of the Goods and Services between the date of the Contract and delivery of the Goods and Services that is beyond the control of ETECH.

#### 4. PAYMENT

- 4.1 The Customer will pay ETECH's account in full by the 20<sup>th</sup> day of the month following the date of the invoice ("the due date") unless alternative details of payment for goods are specified on the Order Form completed by the Customer. If payment details are specified on the Order Form completed by the Customer then the Customer will pay ETECH's account in respect of goods covered by the Order Form in compliance with the Order Form and "the due date" will be determined pursuant to the Order Form.
- 4.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 4.3 Any expenses, disbursements and legal costs incurred by ETECH 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.
- 4.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 4.5 No retentions shall be made by the Customer unless specifically agreed to in the quotation.
- 4.6 A deposit may be required.

#### 5. QUOTATION

- 5.1 Where a Quotation is given by ETECH for Goods and Services:
  - (a) unless otherwise agreed the Quotation shall be valid for 30 days from the date of issue; and
  - (b) the Quotation shall be exclusive of Goods and Services tax unless specifically stated to the contrary;

- (c) ETECH reserves the right to alter the Quotation because of circumstances beyond its control.
- 5.2 Where Goods and Services are required in addition to those specified in the Quotation, the Customer agrees to pay for the additional cost of such Goods and Services.
- 5.3 All specifications, drawings, measurements, descriptive matter, weights, dimensions and shipping specifications submitted with a Quotation, and the description and illustrations contained in any catalogues, price-lists and other advertising matter of the Company are approximate only, and are merely to present a general idea of the work or goods described therein. No particulars contained in any of those materials are binding on the Company.
- 6. WITHDRAWAL OF CREDIT**
- ETECH may at any time in its sole discretion withdraw the provision of credit to the Customer.
- 7. DELIVERY AND RISK**
- 7.1 The Goods and Services remain at ETECH's risk until delivery to the Customer.
- 7.2 Delivery of Goods and Services shall be deemed complete and Risk in the Goods shall pass to the Customer when ETECH gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services are given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 Except in regard to Goods or materials to be erected or installed by ETECH, delivery, unless otherwise stated, will be ex factory. Where arrangements are made for goods to be delivered, whether by our own transport or others, a delivery note is to be signed by the consignee. Failure to sign a delivery note when a delivery is taken will be deemed to be acceptance in good condition of the goods supplied. In the event of damage or loss the Customer must notify ETECH forthwith and register a claim with the carrier concerned within 7 days.
- 8. DELAYS AND VARIATION**
- Variations of an Order will only be accepted if specified to ETECH in writing. Any additional costs incurred as result of the variation will be the responsibility of the Customer. In the event of delays caused by the Customer in giving instructions, accepting delivery or enabling installation, or in the event of changes required by the Customer, the quotation price may be increased to cover costs thereby incurred, and the delivery period may be extended.
- 9. TITLE - SECURITY - ENFORCEMENT**
- 9.1 Title in any Goods and Services supplied by ETECH passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by ETECH and of all other sums due to ETECH by the Customer on any account whatsoever. Until all sums due to ETECH by the Customer have been paid in full, ETECH has a Security Interest in all Goods and Services.
- 9.2 If the Goods and Services 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 Goods and Services shall remain with ETECH until the Customer has made payment for all Goods and Services.
- 9.3 The Customer agrees that at any time after a default in payment, or at any time if any Goods are at risk, ETECH may:
- take possession of any Goods; and/or
  - sell or dispose of any Goods in such manner and generally on such terms and conditions as it thinks fit; and
  - in each case, otherwise to do anything the Customer could do in relation to those Goods.
- 9.4 ETECH and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, ETECH is not the secured party with priority over all other secured parties in respect of those Goods.
- 9.5 Where Goods and Services are retained by ETECH pursuant to clauses 9.3 and 9.4, the Customer waives the rights to receive Notice under section 120 of PPSA, and to Object under section 121 of the PPSA.
- 9.6 The Customer waives its right to receive a copy of any Verification Statement in respect of any Financing Statement relating to any Security Interest granted to ETECH by the Customer.
- 9.7 To the extent permitted by law, the Customer and ETECH agree to contract out of:
- section 114(1)(a) of the PPSA (requirement for notice by ETECH before selling collateral); and
  - sections 133 and 134 of the PPSA (regarding reinstatement of the Security Agreement by the Customer); and
- 9.8 The Customer waives its rights to (i) receive a Statement of Account under section 116 of the PPSA, (ii) recover surplus under section 119 of the PPSA, (iii) not to have goods damaged when ETECH (or any person on its behalf) removes an accession under section 125 of the PPSA; (iv) receive Notice of the removal of an accession under section 129 of the PPSA, and (v) apply to the Court for an Order concerning the removal of an accession under section 131 of the PPSA
- 9.9 The Customer irrevocably gives ETECH (and its employees and agents) the right (without prior notice) to enter any land or premises where ETECH believes the Goods are kept, in order to take possession of and/or remove them, and the Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify ETECH (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.
- 9.10 The Customer agrees to indemnify ETECH (and to pay on demand) for all costs and expenses (including legal fees on a solicitor/client basis) incurred by ETECH:
- as a result of the occurrence of an Event of Default of any Security Interest (including upon actual or attempted enforcements of any Security Interest granted to ETECH by the Customer); and
  - in complying with any Demand made under section 162 of the PPSA.
- 9.11 On the request of ETECH, the Customer shall promptly do all things (including signing any delivery docket and/or invoice) and provide all information necessary to enable ETECH to Perfect and maintain the Perfection of any Security Interest granted to ETECH by the Customer (including by Registration of a Financing Statement).
- 9.12 If the Purchaser sells or otherwise disposes of the goods subject to the Vendor's security interest the proceeds shall be subject to the Vendor's security interest and the Purchaser will keep the proceeds separate from other property (including money) of the same nature owned by the Purchaser or by other persons and account to the Vendor for the proceeds and hold them in trust for the Vendor
- 10. PAYMENT ALLOCATION**
- ETECH may in its discretion allocate any payment received from the Customer towards any invoice that ETECH 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 ETECH, payment shall be deemed to be allocated in such manner as preserves the maximum value of ETECH's Purchase Money Security Interest in the Goods and Services.
- 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 ETECH.
- 12. LIABILITY**
- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and any other Statutes may imply warranties or conditions or impose obligations upon ETECH 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 ETECH, ETECH'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 ETECH shall not be liable for:
- Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by ETECH to the Customer, 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 Goods and Services provided by ETECH to the Customer; and
  - The Customer shall indemnify ETECH 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 ETECH or otherwise, brought by any person in connection with any matter, act, omission, or error by ETECH its agents or employees in connection with the Goods and Services.

12.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from ETECH for the purposes of a business in terms of section 2 and 43 of that Act.

### **13. WARRANTY**

The following conditions apply to Goods and Services provided by ETECH:

- 13.1 ETECH warrants to provide the Goods and Services substantially in accordance with the written specifications where supplied by the Customer or as provided in the order/quotation/contract in a proper and workmanlike manner with the materials specified.
- 13.2 Provided payment for Goods and Services has been made in full, ETECH warrants to remedy any defects in workmanship for a period of six (6) months from the date of delivery provided written notice of the complaint/defect is given to ETECH within seven (7) days of the complaint/defect becoming apparent and provided ETECH is given the first opportunity to rectify the complaint.
- 13.3 ETECH's liability is limited at its sole discretion;
- (a) Remediating any faulty workmanship; or
  - (b) Replacing the goods supplied.
- 13.4 Such remedies shall be at the expense of ETECH provided the Customer shall be liable for the return of the goods to ETECH or the travelling and accommodation expenses of ETECH for repairs carried out on site if it is found that the complaint/defect has not been caused solely by ETECH's faulty workmanship or materials.
- 13.5 This clause does not apply to any goods repaired by any person not authorized by ETECH and does not apply if the goods are used for purposes other than those for which they are intended.
- 13.6 The liability of ETECH whether in contract or in tort of any loss, damage or injury arising directly or indirectly from any defect or any noncompliance of the Goods and Services supplied is limited to replacement or repair of such goods or damage not exceeding the invoice value of such defective or noncomplying goods.

### **14. COPYRIGHT AND INTELLECTUAL PROPERTY**

ETECH owns, and has copyright in, all designs, specifications, documents, work, and software produced by ETECH 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 ETECH. Under no circumstances shall such particulars be communicated to competitors or utilised in any way against the Company.

### **15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing this Contract in consideration for ETECH agreeing to supply Goods and Services 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 ETECH the payment of any and all monies now or hereafter owed by the Customer to ETECH, and indemnify ETECH 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.

### **16. PRIVACY**

- 16.1 The Customer authorises ETECH to seek and obtain from and supply any information concerning the credit worthiness or business standing of the Customer to any other person whether trader, merchant, firm, organisation, company or any agency or source whatever including any credit agency or association or the like and directs any such person to supply and receive and record such information to and from ETECH.
- 16.2 Where the Customer is a natural person the authority given under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 ETECH acknowledges the Customers right to access and to request correction of personal information held by ETECH about the Customer.

### **17. MISCELLANEOUS**

- 17.1 ETECH 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 ETECH 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 ETECH has under this Contract.

17.3 If any provisions 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.