

MODERN BRANDS LTD

COMPANY NO:1601813

PO Box 912001
Victoria Street West
AUCKLAND 1142
New Zealand

Telephone: 0800 606 025
FAX: 0800 606 012

ACCOUNT APPLICATION FORM

Government or Council owned
Private
Public company

PLEASE COMPLETE IN FULL TO ENSURE PROMPT PROCESSING

I/We hereby make application to establish credit facilities with Modern Brands Ltd and its "Related Bodies Corporate" (as defined in the "Conditions of Sale" on the back of this application.

TRADING NAME _____
COMPANY NAME _____
BUSINESS ADDRESS _____
Postcode _____ TEL _____
POSTAL ADDRESS _____ MOB _____
Postcode _____ FAX _____
E-MAIL ADDRESS _____

DETAILS: SOLE TRADER/PARTNERSHIP ONLY

NAME	ADDRESS	PREV ADDRESS	D.O.B.	DRIVERS LICENSE NO	PHONE

TYPE OF BUSINESS: WHOLESALE / RETAIL / OTHER (SPECIFY) _____
MAIN BUSINESS ACTIVITY _____ NO. OF YEARS IN BUSINESS _____
PERIOD UNDER PRESENT OWNERSHIP _____ YRS BUYER _____
ACCOUNTS CONTACT _____ CREDIT LIMIT REQUESTED \$ _____

FOR OFFICE USE ONLY:

SALES REP NAME: _____ SALES REP NO: _____

ASSIGNED CREDIT CONTROLLER: _____

ACCOUNT APPROVED : YES / NO

CREDIT LIMIT: _____

SIGNATURE OF CREDIT MANAGER: _____

CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions, and in the Guarantee, unless the context otherwise requires:

- a) 'Seller': Modern Brands Ltd (Company No. 1601813);, and (as appropriate) any of its Related Bodies Corporate that the Buyer places orders with;
- b) 'Buyer': means the wholesaler, retailer or other business which has applied for credit;
- c) 'Conditions': means these conditions of sale
- d) 'Goods': means all items sold to the Buyer by the Seller; and
- e) 'Related Bodies Corporate': means 'related body corporate' as defined in section 9 of the *Corporations Act 2001*.

2. ALTERATIONS OF CONDITIONS

These Conditions apply to all orders placed by the Buyer with the Seller without exception unless otherwise agreed in writing. By ordering Goods the Buyer accepts these Conditions. Any failure by the Seller to object to any terms or conditions sought by the Buyer shall not be construed as an acceptance of those terms and conditions and will not alter these Conditions.

3. GOVERNING LAW & SUBMISSION TO JURISDICTION

These Conditions, all orders and all contracts entered into between the Buyer and the Seller will be governed by and construed according to the laws New Zealand. The parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

4. ORDERING GOODS

Goods may be ordered by fax, telephone, e-mail or post. The Seller may, at its sole discretion, refuse to accept any order, or part of any order, at any time for whatever reason. Once an order is lodged with and accepted by the Seller, that order cannot be cancelled, varied, or delivery delayed, without the Seller's prior agreement.

5. TERMS OF PAYMENT

Payment from the Buyer to the Seller will be made 30 days from the date of statement. Late payments incur default interest charges at the rate of 14% per annum. Notwithstanding any outstanding deliveries, where payments are overdue, the Seller may at its sole discretion either cancel uncompleted contracts or orders, or suspend delivery of outstanding Goods. Minor defects in the Goods shall not entitle the Buyer to withhold payment therefore.

6. PAYMENT DEFAULT

If the Buyer defaults in payment or breaches any of these Conditions they will be liable for all costs (including legal costs, on a solicitor-client basis) incurred by the Seller to:

- a. recover monies owing by the Buyer to the Seller;
- b. perform any obligation under these Conditions which the Buyer has failed to perform which the Seller elects to perform;
- c. take possession of the Goods; and
- d. exercise, enforce or attempt to enforce any of its rights, or protecting any of its interests.

7. RETENTION OF TITLE(ALL MONIES)

Title and property in goods supplied under this agreement does not pass until the purchaser pays the supplier for the goods and also any other amounts the purchaser may owe the supplier at any time now or in the future, until which time:

- a) title to and property in the Goods remains with the Seller, and the Buyer agrees to hold the Goods on trust, as bailee for the Seller;
- b) the Buyer must not sell, lend, lease or give away the Goods, grant any security interest in the Goods or allow anyone to take a security interest in the Goods;
- c) the Buyer must keep the Goods safe and in good repair, condition and working order, use the Goods for the purpose they were designed for, comply with all laws affecting the Goods, follow any instructions given with the Goods and must not make any alterations to the Goods;
- d) the Buyer must tell the Seller if the Goods are moved from the address that they were delivered to;
- e) the Seller may at any time terminate any contract relating to the Goods and the bailment without notice to the Buyer and may thereupon take possession of the Goods; and
- f) the Buyer authorises the Seller to enter any premises occupied by the Buyer (whether or not the Buyer is present) to take possession of the Goods and authorises the Seller by its servants or agents to use all such reasonable means to obtain such possession.

The Goods are at the Buyer's risk from when they are delivered to the Buyer. The Buyer must insure the Goods for their full insurable value against fire, accident, theft and such other risks as the Seller may require, in the name of both the Buyer and the Seller for each of their respective rights and interests. The Buyer must not do anything, or permit or suffer anything to be done, which could prejudice that insurance.

8. PPSA

The parties agree that clause 7 creates a security interest in the Goods and their proceeds. The Buyer agrees to promptly execute any documents, provide all necessary information and do anything else reasonably required by the Seller to ensure that the security interest constitutes a perfected security interest in the Goods and their proceeds, which will have priority over all other security interests in the Goods and their proceeds.

The Buyer waives any rights it has to receive a copy of a Verification Statement under the Personal Property Securities Act 1999 ("the PPSA") and agrees, to the extent permitted by law, that:

- a. nothing in sections 114(1)(a), 133 or 134 of the PPSA shall apply to these Conditions;
- b. it shall have none of the rights referred to in paras (c)-(e) and (h)-(j) of section 107(2) of the PPSA; and
- c. where the Seller has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply and, in particular, shall not be limited by section 109 of the PPSA.

9. PRICES

All prices are correct at time of publication and subject to change without notice. Prices are exclusive of GST unless otherwise stated.

10. DELIVERY

Quoted delivery and consignment dates are estimates only. The Seller is not liable to the Buyer for any delay or failure to supply goods. Delay in consignment of any part of an order will not relieve the Buyer of its obligation to accept and pay for the remainder of the order.

11. POINT OF DELIVERY & PASSING OF RISK

The Buyer will take delivery of Goods at the Buyer's "Delivery Address" specified in the Application for Credit (unless the Buyer has told the Seller, in writing, of a new address).. The Seller accepts no liability for damage to Goods in transit not notified in writing to it and to the carrier concerned within (7) seven days of delivery.

12. NON DELIVERY

The Seller accepts no liability for non delivery of Goods unless notification on non delivered Goods is made in writing within (7) seven days after receiving delivery or invoice advice from the Seller. The Seller's liability for non delivery is limited to replacement of Goods within a reasonable time at the Seller's cost.

13. RETURN OF GOODS

NO GOODS CAN BE RETURNED UNLESS:

1. PRIOR AUTHORISATION HAS BEEN GIVEN BY THE SELLER – the customer needs to ring customer service for authorisation. Goods will not be accepted back without a BPR RETURN NUMBER.

The Buyer shall not be entitled to return the Goods to the Seller except at the discretion of the Seller. In the event that the Seller permits the Buyer to return the Goods that consent must be expressed in writing signed for on behalf of the Seller and delivered to the usual place of business of the Seller. The Seller and the Buyer agree that the Buyer shall not be entitled in any circumstances to return Goods which the Seller has especially acquired for and at the request of the Buyer.

13. WARRANTY

In the event that title in the Goods shall pass to the Buyer then, as from the moment of passing of title, the Seller warrants those Goods only against manufacturer's defects for a period of (3) three months from the date upon which those Goods were consigned to the Buyer.

14. LIMITATION OF LIABILITY

Under no circumstances will the Seller, its Related Bodies Corporate, their employees, their contractors or anyone else for whom the Seller or one of its Related Bodies Corporate is responsible be liable to the Buyer or to anyone else for any loss of profits or for any indirect or consequential loss.

If the Seller, its Related Bodies Corporate, their employees, their contractors or anyone else for whom the Seller or one of its Related Bodies Corporate is responsible is ever liable to the Buyer for any loss or liability arising directly or indirectly from anything that any of them does or does not do, or delays in doing, whether or not it is contemplated or authorised by these Conditions, then the maximum combined amount all of them (together) will have to pay to the Buyer and anyone else (together) is [\$5,000]. This limitation applies however liability arises or might arise if it were not for this clause.

15. GENERAL

- a. The Seller may vary these conditions at any time by notice in writing to the Buyer.
- b. The Goods will not be used, and are not being acquired for use, primarily for personal, domestic, or household purposes. The Buyer is acquiring the goods for the purposes of a business and agrees that the Consumer Guarantees Act 1993 does not apply.
- c. The Buyer must comply with all agreements it has with the Seller.
- d. The Buyer must not assign or transfer any of its rights, benefits or obligations under these Conditions without the Seller's prior written consent. A change in the ownership, management or effective control of the Buyer shall constitute an assignment requiring the Seller's prior written consent for the purposes of this clause. The Seller may assign its rights, benefits or obligations by notice in writing to the Buyer.
- e. The Seller shall send any notices to the Buyer to the "Business Address" specified in the Application for Credit (unless the Buyer has told the Seller, in writing, of a new address). The Buyer shall send any notices to the Seller to the address specified in the Application for Credit (unless the Seller has told the Buyer, in writing, of a new address).
- f. If the Buyer is made up of more than one person then those persons are jointly and severally liable for the discharge and performance of all of the obligations of the Buyer under these Conditions. Any notice given to one of those persons shall constitute notice to all of them.

16. CHARGE

The Buyer hereby charges with payment of any indebtedness to the Seller all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Buyer. The Buyer agrees that if demand is made by the Seller, the Buyer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Buyer fails to do so within a reasonable time of being so requested, the Buyer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Seller to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Seller may lodge a caveat noting the interest given by this charge on the title of any property of the Buyer whenever it so wishes.

GUARANTEE

In consideration of the Seller having agreed to supply Goods, wares, merchandise and services and of credit and accommodation given to the Buyer at my/our request,

I, _____

OR

we _____ and _____ (jointly and severally),

guarantee to the Seller payment on demand of all monies which are or shall hereafter become due to you by the Buyer and performance of all the Buyer's obligations to the Seller. This guarantee shall be of a continuing guarantee and my/our liability as guarantor shall not be released, prejudiced or affected by the giving of time or any release or other indulgence to the Buyer, nor by any other act, matter or thing that would release me/us had I/we been merely a surety. Nor shall any of the Seller's rights to sue the Buyer be affected hereby. As between me/us and the Seller, I/we may, for all purposes, be treated as the Buyer. The Seller shall be under no obligation to take proceedings against the Buyer before taking proceedings against me/us. I/We reserve the right by notice in writing to the Seller to revoke this guarantee at any time. Such revocation shall be effective only upon its written acknowledgements by the Seller and shall operate to discharge me/us from all liability as to future dealings only by the Buyer with the Seller after the date of the Seller's written acknowledgement

TERMS OF TRADE: 30 DAYS FROM DATE OF STATEMENT (Conditions apply to some account types)

I/We understand that information about me/us may be collected for the purposes of:

- a) assessing the Application for Credit; and
- b) if Modern Brands Ltd decides to provide me/us with credit, to administer my/our account (including recovery of any money I/we owe Modern Brands Ltd and its Related Bodies Corporate).

Modern Brands Ltd will ask me/us for information about myself/ourselves. I/We can decide whether or not to provide any information that it seeks. If I/we do not provide any information, Modern Brands Ltd may be unable to provide me/us with credit. I/we warrant that all information I/we provide is correct.

I/We agree that:

- a) Modern Brands Ltd may collect information about me/us from other credit providers, whose names I/we may have provided to it. I/We authorise them to provide information they hold about me/us to Modern Brands Ltd;
- b) Modern Brands Ltd may obtain a credit report about me/us from a credit reporting agency;
- c) Modern Brands Ltd may collect information about me/us from its Related Bodies Corporate. I/We authorise them to provide information they hold about me/us to Modern Brands Ltd;

I/We authorise Modern Brands Ltd to provide information it holds about me/us to:

- a) its employees, contractors and agents;
- b) its Related Bodies Corporate;
- c) debt collection agencies; and
- d) credit reporters, so that they can report information relevant to the assessment of my/our creditworthiness to other agencies.

I/We authorise each of them to collect information about me/us from Modern Brands Ltd.

I/We authorise Modern Brands Ltd to:

- a) use any information it holds about me/us to market its goods and services to me/us; and
- b) provide any information it holds about me/us to other its Related Bodies Corporate so that they can market goods and services to me/us.

I/we may ask to see information that Modern Brands Ltd and its Related Bodies Corporate hold about me/us. I/We may ask for any details that are wrong to be corrected.

In this Privacy Statement "Related Bodies Corporate" has the meaning set out in the "Conditions of Sale" on the back of this Application.

I/We have read and accept the "Conditions of Sale" on pages 2,3 and 4 of this application.

Signature

Name

Position

Date