



B.L. Marshall Ltd
 Manufacturer's Agents and Distributors
 3 Riverbank Road, New Lynn, Auckland
 Phone 64-9-827 4049, Fax 64-9-827 3939
 P.O. Box 48 146, Auckland, New Zealand



CREDIT ACCOUNT APPLICATION FORM

ENTITY DETAILS:

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

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

Trading as: Postal Address:

Physical Address:

Nature of Business: Years in Business:

Telephone Business: Mobile: Fax:

Email: Website:

Contact Name & Position:

OWNERSHIP please insert Owner(s) / Directors Name(s) in full

1: Address:

2: Address:

3: Address:

IF LIMITED LIABILITY COMPANY – Address of Registered Office:

Date of Incorporation: Affiliated or Parent Companies:

FINANCIAL & PROFESSIONAL ADVISORS

Capital – Authorised \$ Paid up:

Securities over Business Assets:

Name of Accountant: Solicitor:

Bank: Branch: Acct No:

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. I/We warrant B. L. Marshall that the above information is to the best of my knowledge, information and belief true and correct and that I am duly authorised to enter into application and future contracts on the behalf of the customer.

Signed: Print Name: Designation:

Dated this: day of 200.....

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 'B L Marshall' shall mean B. L. Marshall Limited, 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, wholesaler, merchant, retailer or manufacturer purchasing goods from B. L. Marshall.
- 1.3 'Goods' shall mean all goods, chattels, or services, provided by B.L. Marshall to the customer, including the sale of hardware, houseware, plumbing products, or garden products, charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by B. L. Marshall to the customer.
- 1.4 'Price' shall mean the cost of the goods as agreed between B. L. Marshall and customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by B L. Marshall from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

3. USE OF INFORMATION

- 3.1. The customer authorises B. L. Marshall to collect any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by B. L. Marshall to any other party.
- 3.2 The customer authorizes B. L. Marshall 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 clause 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 goods shall be deemed to be sold at the current amount as such goods are sold by B. L. Marshall at the time of contract.
- 4.2 The price, unless specifically stated, shall be exclusive of GST or any other tax, levy or charge made by any government, local authority, or other competent authority.
- 4.3 The price may be increased by the amount if any reasonable increase in the cost of supply of the goods that is beyond the control of B. L. Marshall between the date if the contract and delivery of the goods.

5. PAYMENT

- 5.1 Payment for goods 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 2.5% per month or part month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by B. L. Marshall in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees (on a solicitor/client basis) or any debt collection 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 B. L. Marshall for goods:
 - 6.1.1. The quotation shall be valid for one month 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.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional costs of such goods.

7. RISK

- 7.1 The goods remain at B. L. Marshall's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when B. L. Marshall gives possession of the goods for delivery to the customer, or possession if the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer. The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to B. L. Marshall making time of the essence.
- 7.4 Where B. L. Marshall delivers goods to the customer by installments and B. L. Marshall fails to deliver one or more installments the customer shall not have the right to repudiate the contract but shall have the right to compensation as a severable breach.

8. AGENCY

- 8.1 The customer authorizes B. L. Marshall to contract either as principal or agent for the provision of goods that are the matter of this contract or for the distribution, carriage, transportation or storage of goods.
- 8.2 Where B. L. Marshall 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

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by B. L. Marshall.
- 9.2 When the customer has not paid for any goods in its possession properly in such goods shall remain with B. L. Marshall and:
 - 9.2.1 The goods shall be held by the customer as bailee, and
 - 9.2.2 If the goods are attached, fixed or incorporated into any property of the customer, by way of manufacturing or assembly process by the customer or any third party, title in the goods shall remain with B. L. Marshall until the customer has made payment for all goods, 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 deemed to be assigned to B. L. Marshall as security for the full satisfaction by the customer of the full amount owing between B. L. Marshall and customer.

- 9.2.3 The customer shall maintain the goods in good order and condition and insure them against all loss or damage and return the goods immediately to B. L. Marshall if called upon to do so.
- 9.2.4 The customer gives irrevocable authority to B. L. Marshall to enter any premises occupied by the customer or any third party, at any reasonable time, to remove any goods not paid for in full by the customer. B. L. Marshall shall not be liable for costs, damages or expenses or any other 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.

10. RETURN OF GOODS

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies B. L. Marshall otherwise, quoting the packing slip number, within 10 days of delivery of the goods to the customer.
- 10.2 If the goods are not accepted according to clause 10.1 of this contract the customer shall pay for the delivery of the returned goods to B. L. Marshall whereby the customer shall be entitled to a credit for the purchase of any such goods.

11. LIABILITY

- 11.1 Except as otherwise provided by statute B. L. Marshall shall not be liable for:
 - 11.1.1 Any loss or damage of any kind whatsoever suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services provided by B. L. Marshall to the customer and without limiting the generality of the foregoing of this clause B. L. Marshall shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
 - 11.1.2 Except as provided in this contract B. L. Marshall shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by B. L. Marshall to the customer, and
 - 11.1.3 The customer shall indemnify B. L. Marshall against all claims of any kind whatsoever caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of negligence of B. L. Marshall or otherwise, brought by any person in connection with any matter, act, omission, or error by B. L. Marshall its agents or employees in connection with the goods.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from B. L. Marshall for the purposes of a business in terms of Section 2 and 43 of that Act.

13. WARRANTY

- 13.1 No representation, condition, warranty, or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the consumer Guarantees Act 1993 or except where expressly stated in the contract.
- 13.2 B. L. Marshall does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

14. CANCELLATION

- 14.1 B. L. Marshall shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 14.2 Any cancellation or suspension under clause 14.1 of this agreement shall not affect B. L. Marshall's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to B. L. Marshall under this contract.

15. DISPUTE RESOLUTION

- 15.1 Where there is dispute arising under the terms of this contract then the party raising the dispute shall give written notice to the other party in writing informing it of the details of the dispute, the remedy sought and refer the dispute to arbitration under the Arbitration Act 1908.
- 15.2 The dispute shall be determined by one arbitrator to be agreed upon by the parties or, failing agreement shall be nominated by the President of the New Zealand Law Society or her appointee.
- 15.3 The decision if the arbitrator shall be final and binding on both parties and the costs of any arbitration shall be borne as the arbitrator shall direct.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of B. L. Marshall
- 16.2 B. L. Marshall shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by B. L. Marshall 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 B. L. Marshall has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.1 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.2 Any personal guarantee made by any third party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 16.3 Any clerical error or omission shall be subject to correction.
- 16.4 If any provision 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.