

APPLICATION FOR CREDIT ACCOUNT

PO BOX 204336, Highbrook, Auckland 2161
MSS MECHANICAL SUPPORT SYSTEMS LTD
 Unit 1, 15 Ra Ora Road, East Tamaki 2013 Manukau City
 PH: (09) 279 8292 FAX: (09) 278 2777
 Free Phone 0508 Cable Tray
www.mechanicalsupport.co.nz

Company or Business Name: _____

ABN/COMPANY Number (attach proof): _____

GST NUMBER: _____

MSSM

Trading Name _____

Business Address: _____

P/Code: _____

Delivery Address: _____

as above' if same _____

P/Code: _____

Postal Address: _____

as above' if same _____

P/Code: _____

Telephone No: () _____ Facsimile No: () _____

Purchasing Officer; _____ Email Address: _____

Accounts Payable Officer; _____ Email Address: _____

Company Bankers: _____

Address: _____

TRADE REFERENCES:

| | Name: | Address: | Phone: | Facsimile |
|-----|-------|----------|--------|-----------|
| 1.. | _____ | | | |
| 2.. | _____ | | | |
| 3.. | _____ | | | |

DIRECTORS/PARTNERS PARTICULARS

PLEASE SIGN

| | Name: | Address: | |
|-----|-------|----------|------------------------------------|
| | | | Authority for Credit Ref. Check |
| 1.. | _____ | | _____ |
| 2.. | _____ | | _____ |
| 3.. | _____ | | _____ |

Credit Limit Request: \$ _____

CUSTOMER - PLEASE ATTACH A BLANK COPY OF YOUR LETTERHEAD TO THIS APPLICATION TO VERIFY BUSINESS.

BY APPLYING FOR CREDIT ACCOUNT, YOU ARE ACCEPTING OUR TERMS OF TRADE.

PAYMENT OF INVOICES IS STRICTLY 20TH FOLLOWING MONTH

OFFICE USE ONLY:

| | |
|-----------------------------------|--------------------------|
| CREDIT LIMIT APPLIED: \$ _____ | ACCOUNT NO: _____ |
| APPROVED BY BRANCH MANAGER: _____ | CREDIT CONTROLLER: _____ |

1. DEFINITIONS

- 1.1 "MSS" shall mean MSS Mechanical Support Systems Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of or with the authority of the customer, or any person purchasing goods or services from "MSS".
- 1.3 "Goods" shall mean all goods supplied by "MSS" to the customer, including, but without limitation, all cable support components.
- 1.4 "Services" shall mean all services provided by "MSS" to the customer and shall include without limitation the provision of all cable support components work, installation, all charges for labour and work, hire charges, insurance charges, all costs and charges associated with a change to the original order or quote, or any fee or charge whatsoever associated with the supply of services by "MSS" to the customer.
- 1.5 "Price" shall mean the cost of the goods or services as agreed between "MSS" and the customer subject to clause 4 of this contract.
- 1.6 "Residential construction contract", "payment claim", "progress payment" and all related terms have the meanings given them by the Construction Contracts Act 2002.

2. Retention of Title

- 2.1 Ownership of, or title in, the goods shall not pass to the customer until the customer has paid to "MSS" the invoiced price in full, for all goods in the customer's possession at time of payment, provided also that if the goods become fixtures then that shall not extinguish or diminish the obligation of the customer to pay "MSS".
- 2.2 The customer agrees with "MSS" that they shall treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors despite the fact of the goods having become fixtures at any time before payment has been made for them.

3. PRICE

- 3.1 Where no price is stated in writing the goods or services shall be deemed to be sold at the current price applying at the date on which the invoice for the goods or services is issued to the customer.
- 3.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods or services that is beyond the control of "MSS" between the date of the contract and delivery of the goods or providing of the services.
- 3.3 All prices are quoted excluding GST unless otherwise stated.

4. PAYMENT

- 4.1 Payment for goods or services shall be made in full on or before the 20th day of the month following either the month in which the invoice is issued or the month in which the goods are delivered, whichever is the earlier ("the due date").
- 4.2 Without limiting the application of clause 5.1, if "MSS" decides to issue a payment claim pursuant to the Construction Contracts Act 2002 then the progress payment set out in the payment claim shall become due and payable as set out in the said Act being 20 working days after the payment claim is served on the customer.
- 4.3 Interest may be charged on any amount owing after the due date at the rate of 3% per month or part month.
- 4.4 Any expenses, disbursements and legal costs incurred by "MSS" 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.
- 4.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

5. CONSTRUCTION CONTRACTS ACT 2002

- 5.1 The parties acknowledge that all provisions of the Construction Contracts Act 2002 shall apply to this contract except where inconsistent with this contract.
- 5.2 The parties further acknowledge that all provisions of the said Act, including those sections listed in section 10 of the said Act, shall apply to this contract even if it is a residential construction contract as that term is defined by the said Act.

6. DELIVERY

- 6.1 Deliveries quoted are those to which we anticipate no difficulty in adhering but are not guaranteed. Material from stock is offered subject to being unsold upon receipt of Buyer's order. They Buyer shall not be entitled to cancel orders due to delays in delivery or any reason unless we agree in writing. We accept no liability or claim for consequential damages resulting from late delivery. Delivery and handling charges apply.

7. QUOTATION

- 7.1 Where a quotation is given by "MSS" for goods or services:
- 7.1.1 The quotation shall be valid for one month from the date of issue; and
- 7.1.2 The quotation shall be exclusive of Goods and Services Tax (GST) unless specifically stated to the contrary.
- 7.2 Where goods or services are required in addition to the quotation the customer agrees to pay for the additional cost of goods or services.

8. RISK

- 8.1 The goods remain at "MSS's" risk until the delivery to the customer, but when title passes to the customer pursuant to clause 3 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 8.2 Delivery of goods shall be deemed complete when "MSS" gives possession of the goods for delivery to the customer, or possession of the goods are given to a common carrier or other bailee for the purposes of transmission to the customer.
- 8.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to "MSS" making time of the essence.
- 8.4 Where "MSS" delivers goods or provides services to the customer by instalments and "MSS" fails to deliver or supply one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.
- 8.5 Notwithstanding clause 9.4 above, the customer shall not be entitled to claim compensation, or take any legal action in regard to a failure to supply, unless and until "MSS" has received written notice of such a failure and has been given 10 working days to remedy that failure.

9. AGENCY

- 9.1 The customer authorises "MSS" to contract either as principal or agent for the provision of goods or services that are the subject-matter of this contract.
- 9.2 Where "MSS" enters into a contract of the type referred to in clause 10.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

10. RETURN OF GOODS

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies "MSS" otherwise within ten (10) working days of delivery of the goods to the customer.
- 10.2 No goods will be accepted for return by "MSS" without prior approval.

11. LIMITATION OF LIABILITY

- 11.1 Except as otherwise provided by statute "MSS" shall not be liable for:

- 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by "MSS" to the customer and without limiting the generality of the foregoing of this clause "MSS" 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 "MSS" shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by "MSS" to the customer; and
- 11.1.3 The customer shall indemnify "MSS" against all claims 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 "MSS" or otherwise, brought by any person in connection with any matter, act, omission, or error by "MSS" its agents or employees in connection with the goods and services.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods and services from "MSS" 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 or services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 13.2 "MSS" guarantee all goods of our manufacture to the extent that we will replace those having defects of materials or workmanship when free of charge, F.O.B our factory, after they have been returned, carrying charges prepaid, to our factory, and a sufficient amount of time allowed for determination of justification of claim. Our liability under this guarantee is limited to replacement of any product which is proven defective in material or workmanship within one (1) year of shipment date from our factory.
- 13.3 Without limiting the generality of clause 13.1 hereto new parts are warranted free from defective workmanship and material for a period of one year from delivery provided that such parts are correctly installed by a qualified person and subject to normal use and service however no warranty shall exceed that given by the manufacturer to the customer at the time of purchase.
- 13.4 Damage resulting from improper storage, improper handling or improper use will not be considered our liability.

14. CANCELLATION

- 14.1 "MSS" 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 or services to the customer if the customer fails to pay any money owing after the due date, or if the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967, or if liquidation proceedings are commenced in relation to the customer, or if the customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or solvency on the part of the customer.
- 14.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect "MSS'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 "MSS" under this contract.

15. COLLECTION AND USE OF INFORMATION

- 15.1 The customer authorises "MSS" 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 goods and services provided by "MSS" to any other party.
- 15.2 The customer authorises "MSS" to disclose any information obtained to any person for the purpose set out in clause 16.1.
- 15.3 Where the customer is a natural person the authorities under clauses 16.1 and 16.2 are authorities or consents for the purposes of the Privacy Act 1993.

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 "MSS".
- 16.2 "MSS" 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 "MSS" 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 "MSS" has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negative or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 Any dispute shall be determined in accordance with the provisions of the Arbitration Act 1996.
- 16.7 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.
- 16.8 Failure to meet credit worthiness will constitute reason for cancellation of contract by "MSS" without incurring any costs.

17. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 17.1 Expressions used in this clause 17 have the meaning ascribed to them in the PPSA.
- 17.2 The Company reserves the right at its discretion to register a financing statement in respect of any goods supplied by "MSS" to the customer pursuant to the Terms of Trade and which are subject to clause 2 of these Terms of Trade and in respect of which credit has been extended by "MSS" to the customer.
- 17.3 The costs of registering a financing statement or a financing change statement shall be paid by the customer and, where applicable, debited by "MSS" against the customer's account with "MSS".
- 17.4 On request by "MSS" the customer shall promptly execute any documents and do anything else required by "MSS" to ensure that the security interest created under these Terms of Trade constitutes a perfected security interest over the goods referred to in subclause 17.2.
- 17.5 The customer shall not agree to allow any person to file a financing statement over any of the goods referred to in subclause 17.2 without the prior written consent of "MSS" and shall notify "MSS" immediately if it becomes aware of any person taking steps to file a financing statement against any of such goods.
- 17.6 The customer and guarantor (if any) hereby waive their respective rights to receive a verification statement in respect of any financing statement or financing change statement pursuant to section 148 of the PPSA.