



UNDERGROUND COFFEE COMPANY

Credit application form

P.O.Box 12-133 Beckenham Christchurch New Zealand p: 3 9617310 f: 03 9617311
e: info@undergroundcoffee.co.nz www.undergroundcoffee.co.nz

trading name of Applicant (referred to in the Terms and Conditions as the "Buyer")	company name (if different from trading name) company number registered office address
trading address	postal address if different from trading address
phone number alternate contact phone number	fax number
email address	contact person (include first & last name and address)
length of time this business has been operating	alternate contact person (include first & last name)
Credit references (please provide 3) include company name, personal contact name, address and phone number. 1) 2) 3)	

Declaration:

I/we _____ of _____, _____
(Full name – print) (address) (capacity i.e. director)

Declare that:

- the information given above is true and correct in every particular and is a correct representation of the position of the Applicant and that the same may be relied upon by Underground Coffee Company ("the Company") in assessing the creditworthiness of the Applicant and any change in the Applicant's details and any changes that may affect the Applicant's creditworthiness will be advised to the Company immediately; and
- this declaration is made on behalf of the Applicant and I/we am/are authorised to enter into this Agreement on the Applicant's behalf; and
- I/we have read the attached terms and conditions and acknowledge that these terms are the terms which will apply in respect of all contracts for the supply of goods and services by the Company to the Applicant and agree that such terms and conditions may be altered at any time by the Company and that credit may be reviewed or terminated at the instance of the Company at any time; and
- I/we have read and agree to the Information and Privacy Act provisions in the attached terms and conditions; and
- the Applicant agrees to grant such access as required by the Company to such property as is necessary for repossession of goods; and
- we agree to personally guarantee the Applicant's obligations to the Company from time to time and fully indemnify the Company in respect of any loss suffered by the Company as a result of the Buyer's default; and
- I/we acknowledge that I/we have been advised to take independent legal advice as to the implications of clause 6 of this declaration.

Signed by Applicant (all partners if a partnership and all directors if a company)

_____	_____	_____	_____
Signature	Full Name	Capacity	Date
_____	_____	_____	_____
Signature	Full Name	Capacity	Date

Application Accepted: _____ Date: _____
(For and on behalf of the Company)

TERMS AND CONDITIONS

1. These terms and conditions ("the Terms and Conditions") shall apply to the provision of all Goods by the Company to the Buyer and are the Terms and Conditions referred to on the Company's Credit Application Form. The Company reserves the right to amend the Terms and Conditions by written notice to the Buyer.
2. In the Terms and Conditions, "Goods" means any goods or services supplied by the Company to the Buyer from time to time.

PRICES AND VARIATION

3. Where a price is quoted to the Buyer then, subject to clause 4, the price of the Goods will be the price quoted if the Goods are ordered within 30 days of the quote. Otherwise the price will be the price indicated on any invoice provided by the Company to the Buyer in respect of the Goods supplied.
4. Any increase in Company's cost of supply of the Goods between the date of quotation and delivery that is beyond the reasonable control of the Company shall be payable by the Buyer.
5. Any variation in the quantity of Goods supplied to the Buyer after the date of the quotation shall be at the Buyer's expense. The Goods shall be priced at either the price applicable to the original quantity under the quotation or such other price as the Company may determine in its absolute discretion.
6. Unless otherwise stated GST and any other taxes and duties which are applicable will be charged on the price of the Goods as at the date of the Company's invoice.
7. The Buyer will also pay for any costs of carriage.

TERMS OF PAYMENT

8. All Goods must be paid for in full on delivery unless the Buyer has applied and, at the Company's discretion, been accepted for credit by the Company in which case payment shall be made by the 20th day of the month following the issue of the Company's invoice.
9. The Company reserves the right to charge interest on overdue accounts at the Company's bank unsecured commercial overdraft rate plus 2% for the time being calculated on a daily basis. Unless otherwise stated the amount payable shall be that shown on the Company's invoice without any deduction or set-off whatsoever.
10. Receipt by the Company of any cheque or other payment method shall not be deemed to be payment until the same has been honoured or cleared and until such time shall not prejudice or affect the Company's rights, powers or remedies against the Buyer and/or the Goods.

RETURN OF GOODS FOR CREDIT

11. No Goods will be accepted for return and credit without the prior written authority of the Company and then only on such terms and conditions as the Company may agree.
12. All Goods accepted by the Company for credit must be delivered at the Buyer's expense in original condition and packaging and are subject to the Company's inspection upon receipt.
13. Credit will not be given for damaged or used Goods or for freight or restocking charges.

WARRANTY

14. The Company agrees that Goods of its own manufacturer are warranted free of defective workmanship for a period of one year from the date of delivery but such warranty does not cover depreciation due to normal wear, tear or faults due to misuse or accident.
15. Goods not manufactured by the Company are sold with the same warranties given by the manufacturer provided those warranties are capable of being assigned to the Buyer.
16. All warranties expressed or implied are strictly conditional upon full payment having been received unless the Company has agreed credit terms.
17. The Company's obligations under this warranty extend only to the repair or replacement of defective Goods.
18. The Company shall provide its services in a proper and businesslike manner.

CLAIMS

19. If the Buyer has any claim in respect of defects, damage, failure to comply with a description or quote or short supply the claim must be made to the Company in writing within 7 days of the date of delivery. The fact that no such claim has been made shall be conclusive evidence in any proceedings between the Company and the Buyer that the Goods at the time of delivery were free from any defect or damage.
20. Under no circumstances whatsoever is the Company to be liable for indirect or consequential damages or for any loss of business or profit, however caused, occasioned through any defect in the Goods or the failure or omission of the Company to comply with its obligations under the Terms and Conditions.
21. In any event the maximum amount of any claim in relation to the provision of Goods by the Company shall be limited to the price invoiced to the Buyer in respect of such Goods.

TITLE AND RISK

22. The risk in the Goods supplied to the Buyer will pass to the Buyer on delivery. Delivery of the Goods is deemed to occur when the Goods are delivered by the Company to a courier or carrier for the purpose of transmission to the Buyer.
23. Ownership in the Goods shall not pass to the Buyer until all money the Buyer owes to the Company has been paid in full.
24. If any part of the Goods shall become incorporated into any other property so as to lose its separate identity then the title of that proportion of the property so integrated equal in value to the price owed to the Company shall be reserved and vested in the Company until all money the Buyer owes to the Company has been paid in full.
25. Until the Company receives payment in full the Buyer shall hold or deal with the Goods for and on behalf of the Company and in every respect as a fiduciary and agent.
26. If the Goods or any part of them are sold by the Buyer prior to payment having been made to the Company then the proceeds of sale shall be held by the Buyer on trust for and on behalf of the Company in a separate account.

27. In the case of Goods where title is reserved to the Company the Buyer hereby authorises the Company to approach the Buyer's existing or subsequent chargeholder(s) where appropriate to obtain the acknowledgement of the chargeholder of the Company's Security Interest in the Goods and confirmation that the Company shall have priority with regard to any Goods in which title is reserved to the Company.

PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA") (Capitalised expressions have the meaning prescribed to them in the PPSA)

28. The Buyer acknowledges the Company's Security Interest in all Goods ("Collateral") supplied to the Buyer but not paid for under the Terms and Conditions.
29. The Company reserves the right at its discretion to register a Financing Statement in respect of Goods supplied to the Buyer which comprises Collateral. The costs of registering a Financing Statement or Financing Change Statement shall be paid by the Buyer and may be debited by the Company against the Buyer's account with the Company. On the request by the Company the Buyer shall promptly execute any documents and do anything else required by the Company to ensure that the Company's Security Interest in the Collateral created by the Terms and Conditions constitutes a Perfected Security Interest over the Goods comprising Collateral.
30. The Buyer shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Company and shall notify the Company immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
31. The Seller, Buyer and Guarantor (if any) agree that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to the Terms and Conditions and the Buyer waives its rights as a debtor under sections 121, 125, 129, 131 and 132 of the PPSA.
32. The Buyer waives its right under section 148 of the PPSA to receive a copy of the Verification Statement.

INTELLECTUAL PROPERTY

33. Where the Company has proprietary rights in copyright, designs, brand name, designmark, servicemark, or trademark ("Designs") pertaining to the Goods it will retain all such rights. The Buyer will only use the Designs with the Company's approval.

DELIVERY

34. The Company will make every effort to complete delivery on the date agreed but the Company will not be liable for late delivery or consequential damages of any kind arising out of late delivery nor will the Company accept cancellation of any order because of late delivery.

DEFAULT

35. In the event that the Buyer fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then the Company reserves the right to:
 - 35.1. treat all sums due or to become due from the Buyer as immediately due and payable
 - 35.2. cancel or suspend delivery of Goods
 - 35.3. by its agents enter onto the Buyer's premises (without the necessity of giving notice) where the Goods may be stored and to search for and remove and take possession of the Goods without being in any way liable to the Buyer or anyone claiming under it for so doing
 - 35.4. withhold the further supply of Goods on credit.
36. In the event of default under the Terms and Conditions the Buyer will at the Company's request:-
 - 36.1. re-deliver the Goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them; and
 - 36.2. instruct any third parties who owe money in respect of Goods to pay that money direct to the Company; and
 - 36.3. make any records available that may assist the Company to take the proceeds of the Goods.
37. The Buyer will be liable for and indemnifies the Company for all expenses and losses incurred or suffered by the Company in the enforcement of, or as a result of any default under, the Terms and Conditions, including solicitor – own client legal costs and debt collection agency fees.

TERMS AND CONDITIONS SOLE EVIDENCE OF CONTRACT

38. The Credit Application Form and the Terms and Conditions shall constitute the sole evidence of the contract between the Company and the Buyer to the exclusion of all conditions and warranties statutory or otherwise not expressly incorporated herein and it is strictly understood that the Buyer enters into the Terms and Conditions solely and exclusively in reliance upon its own judgment and not upon any representation, condition or warranty made or alleged to be made by the Company or its agent.

ARBITRATION

39. Any dispute whatsoever arising under this agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or amendment thereof at the time being in force. New Zealand law governs and New Zealand Courts have non-exclusive jurisdiction in relation to the Terms and Conditions.

FORCE MAJEURE

40. The Company shall not be liable to the Buyer for damages directly or indirectly arising from any failure in delivery of the Goods or failure to perform any of the Terms and Conditions where such failure is caused directly or indirectly by an act of God, frost, electrical failure, fire, armed conflict, labour dispute, civil commotion, Government intervention, or inability to obtain labour or materials, accidents, transportation delays, or any other cause beyond the Company's reasonable control.

INFORMATION AND PRIVACY ACT

41. For the purposes of assessing the Buyer's credit worthiness, enforcing any rights under the Terms and Conditions or marketing the Company's products and services, the Buyer authorises the Company to hold, collect and use information about the Buyer and supply that information to any credit

reporting agency or to any person to facilitate collection of debts from the Buyer.

42. The Buyer also authorises any third party to supply to the Company any information about the Buyer requested by the Company.
43. The information will be held securely at the Company's originating office referred to on the Credit Application Form and/or the Company's Invoice.
44. The information will be accessible to any of the Company's employees and agents who need access to it for the administration of the Company's business; and
45. The Buyer may request access to and correction of any information about the Buyer held by the Company at any time.

CONSUMER GUARANTEES ACT 1993 ("CGA")

46. Where the Company is supplying Goods to the Buyer for business purposes within the meaning of the CGA, pursuant to section 43 of the CGA, the provisions of the CGA will not apply to the Terms and Conditions.

47. Where the Buyer supplies the Goods to a person acquiring them for business purposes it will be a term of the Buyer's contract with the buyer of the Goods that the CGA will not apply in respect of the Goods.

TERMINATION

48. The Company may terminate the Terms and Conditions on the giving of 7 days notice in writing to the Buyer but such termination shall be without prejudice to any existing rights and remedies that the Company may have against the Buyer.

GENERAL

49. The Company may assign any of its rights or obligations to any person. The Buyer may not assign any of its rights or obligations to any person without the Company's consent.