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HITCHINS NEW ZEALAND LIMITED

ACCOUNT APPLICATION FORM

ENTITY DETAILS:

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

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

Trading as: Postal Address:

Physical Address: Email:

Nature of Business: Years in Business:

Telephone: Fax: Date of Birth:

Contact Name & Position:

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

1:..... Address:

2:..... Address:

IF LIMITED LIABILITY COMPANY - Address of Registered Office:

Date of Incorporation: Incorporation No:

FINANCIAL & PROFESSIONAL ADVISORS

Shareholders Funds: Paid Up:

Name of Accountant: Solicitor:

Bank:..... Branch: Acct No:

TRADE REFERENCES			
Company	Contact Name	Phone Number	Account open since

General Description of Goods/Products/Services to be Provided:

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Hitchins New Zealand Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/aro duly authorised to enter into this application and future contracts on behalf of the Customer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

If the applicant is a company then this application form must be signed by a director of the company.

Signed Print Name Designation

Dated this day of 20

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Hitchins" shall mean Hitchins New Zealand Limited, or any duly appointed agent in writing or Hitchins employee.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Hitchins.
- 1.3 "Products" shall mean:
 - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Hitchins to the Customer; and
 - 1.3.2 all Products supplied by Hitchins to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by Hitchins including the current product price list; and
 - 1.3.4 all Products supplied by Hitchins and further identified in any invoice issued by Hitchins to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by Hitchins or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Hitchins; and
 - 1.3.6 all of the Customer's present and after-acquired Products that Hitchins has performed work on or to or in which goods or materials supplied or financed by Hitchins have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall mean all products, goods, services and advice provided by Hitchins to the Customer and shall include without limitation the manufacture and supply of building surface products and all building inspections, reporting and consulting services and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Hitchins to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as per the current product price list or as agreed between Hitchins and the Customer and includes all disbursements eg service charges, freight cost, surcharges and charges Hitchins pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Hitchins from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Hitchins 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 Products and Services provided by Hitchins to any other party.
- 3.2 The Customer authorises Hitchins 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 clauses 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 Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Hitchins at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Hitchins between the date of the contract and delivery of the Products and Services.
- 4.3 The price and terms and conditions of supply may be further defined in the current product price list.

5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date"). Definitely no later than the end of the month.
- 5.2 Interest will be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Hitchins 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.
- 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.
- 5.5 If payments are not made by the due date then Hitchins may withdraw credit and the Customer's applicatorship.
- 5.6 A deposit and subsequent final payment will be required for non-standard or specific transactions.

6. QUOTATION

- 6.1 Where a quotation is given by Hitchins for Products and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days 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;
 - 6.1.3 Hitchins reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

7. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 7.1 Title in any Products and Services supplied by Hitchins passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Hitchins and of all other sums due to Hitchins by the Customer on any account whatsoever. Until all sums due to Hitchins by the Customer have been paid in full, Hitchins has a security interest in all Products and Services.
- 7.2 If the Products 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 Products and Services shall remain with Hitchins until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be assigned to Hitchins as security for the full satisfaction by the Customer of the full amount owing between Hitchins and Customer.
- 7.3 The Customer gives irrevocable authority to Hitchins to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Hitchins believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. Hitchins shall not be liable for any costs, damages, expenses or 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 unless by statute such liability cannot be excluded. Hitchins may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Hitchins reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 7.4 Where Products and Services are retained by Hitchins pursuant to clause 7.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

7.5 The following shall constitute defaults by the Customer:

- 7.5.1 Non payment of any sum by the due date.
- 7.5.2 The Customer intimates that it will not pay any sum by the due date.
- 7.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.
- 7.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Hitchins remains unpaid.
- 7.5.5 The Customer is bankrupt or put into liquidation or a receiver is appointed to any of the Customer's assets or a bankruptcy order is made against any of the Customer's assets.
- 7.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 7.5.7 Any material adverse change in the financial position of the Customer.

7.6 If the Credit Repossession Act applies to any transaction between the Customer and Hitchins, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

8. SECURITY INTEREST FOR SERVICE PROVIDERS

- 8.1 The Customer gives Hitchins a security interest in all of the Customer's present and after-acquired Property that Hitchins has performed services on or to or in which products or materials supplied or financed by Hitchins have been attached or incorporated.

9. DISPUTES

- 9.1 No claim relating to Products and Services will be considered unless made within seven (7) days of supply.
- 9.2 All claims are required to be notified in writing within seven (7) days and are limited to the invoiced value of the Products and Services.
- 9.3 No Products will be accepted for return without prior approval in writing from Hitchins. The Customer will be responsible for any return costs including freight.

10. LIABILITY

- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Hitchins 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 Hitchins, Hitchins' liability shall, where it is allowed, be included or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 Hitchins shall not be liable for:
 - 10.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and Services by Hitchins 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 Products and Services provided by Hitchins to the Customer; and
 - 10.2.2 The Customer shall indemnify Hitchins (including its authorised agents) 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 Hitchins or otherwise, brought by any person in connection with any matter, act, omission, or error by Hitchins its agents or employees in connection with the Products and Services.
- 10.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, Hitchins is deemed to be liable to the Customer, following and arising from the supply of Products and Services by it to the Customer, then it is agreed between Hitchins and the Customer that such liability is limited in its aggregate to the invoiced value of the Products and Services.

11. WARRANTY

- 11.1 Any written warranty that Hitchins provide to the Customer will also form part of these terms and conditions of trade.

12. COPYRIGHT AND INTELLECTUAL PROPERTY

- 12.1 Hitchins, owns and has copyright in all products, work, designs, solutions, drawings, specifications, software, electronic data and documents produced by Hitchins in connection with the Products and Services provided pursuant to this contract and the client may use the Products and Services only if paid for in full and for the purpose for which they were intended and supplied by Hitchins.

13. CONSUMER GUARANTEES ACT

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

14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Hitchins agreeing to supply Products 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 Hitchins the payment of any and all monies now or hereafter owed by the Customer to Hitchins and indemnify Hitchins 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. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. MISCELLANEOUS

- 15.1 Hitchins shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by Hitchins 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 Hitchins has under this contract.
- 15.3 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.
- 15.4 Where applicable the Construction Contracts Act 2002 applies.
- 15.5 If the Customer defaults in payment then the Customer agrees that where the Products and Services relate to Customers land, then the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles Hitchins to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
- 15.6 The terms and conditions contained in any other documentation provided by Hitchins to the Customer (including price list, supply notes and conditions and Gunac applicator application form) shall also form part of these terms and conditions of trade.