

TAURANGA CANVAS COMPANY LIMITED

PO Box 4337, Mount Maunganui. 83 Portside Drive, Mount Maunganui.

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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 Tauranga Canvas Company Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are 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 completed by a director of the company.

Signed Print Name Designation

Signed Print Name Designation

Signed Print Name Witness

Dated this day of 20.....

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Tauranga Canvas Co Ltd" shall mean Tauranga Canvas Company 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 purchasing products and services from Tauranga Canvas Co Ltd.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Tauranga Canvas Co Ltd to the Customer; and
- 1.3.2 all Goods supplied by Tauranga Canvas Co Ltd to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Tauranga Canvas Co Ltd; and
- 1.3.4 all Goods supplied by Tauranga Canvas Co Ltd and further identified in any invoice issued by Tauranga Canvas Co Ltd to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by Tauranga Canvas Co Ltd or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Tauranga Canvas Co Ltd; and
- 1.3.6 all of the Customer's present and after-acquired Goods that Tauranga Canvas Co Ltd has performed work on or to or in which goods or materials supplied or financed by Tauranga Canvas Co Ltd 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 "Goods and Services" shall mean all goods, equipment, products, services and advice provided by Tauranga Canvas Co Ltd to the Customer and shall include without limitation the design, manufacture, supply and repair of tarpaulins and other canvas and PVC goods and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by Tauranga Canvas Co Ltd to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between Tauranga Canvas Co Ltd and the Customer and includes all disbursements eg charges Tauranga Canvas Co Ltd pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Tauranga Canvas Co Ltd from the Customer for the supply of Goods 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 Tauranga Canvas Co Ltd 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 Tauranga Canvas Co Ltd to any other party.
- 3.2 The Customer authorises Tauranga Canvas Co Ltd 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 Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by Tauranga Canvas Co Ltd 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 Goods and Services that is beyond the control of Tauranga Canvas Co Ltd between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

- 5.1 Payment for Goods 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").
- 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.
- 5.3 Any expenses, disbursements and legal costs incurred by Tauranga Canvas Co Ltd 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 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by Tauranga Canvas Co Ltd for Goods 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 Tauranga Canvas Co Ltd reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

7. RISK

- 7.1 The Goods and Services remain at Tauranga Canvas Co Ltd's risk until delivery to the Customer.
- 7.2 Delivery of Goods and Services shall be deemed complete when Tauranga Canvas Co Ltd gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

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

- 8.1 Title in any Goods and Services supplied by Tauranga Canvas Co Ltd passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by Tauranga Canvas Co Ltd and of all other sums due to Tauranga Canvas Co Ltd by the Customer on any account whatsoever. Until all sums due to Tauranga Canvas Co Ltd by the Customer have been paid in full, Tauranga Canvas Co Ltd has a security interest in all Goods and Services.
- 8.2 If the Goods 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 Goods and Services shall remain with Tauranga Canvas Co Ltd until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to Tauranga Canvas Co Ltd as security for the full satisfaction by the Customer of the full amount owing between Tauranga Canvas Co Ltd and Customer.
- 8.3 The Customer gives irrevocable authority to Tauranga Canvas Co Ltd to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if Tauranga Canvas Co Ltd believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Tauranga Canvas Co Ltd 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. Tauranga Canvas Co Ltd may either resell any repossessed Goods 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 Goods and Services and credit the Customer's account with the invoice value thereof less such sum as Tauranga Canvas Co Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods and Services are retained by Tauranga Canvas Co Ltd pursuant to clause 8.3 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.

8.5 The following shall constitute defaults by the Customer:

- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
- 8.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Tauranga Canvas Co Ltd remains unpaid.
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.

9. SECURITY INTEREST FOR SERVICE PROVIDERS

- 9.1 The Customer gives Tauranga Canvas Co Ltd a security interest in all of the Customer's present and after-acquired property that Tauranga Canvas Co Ltd has performed services on or to or in which goods or materials supplied or financed by Tauranga Canvas Co Ltd have been attached or incorporated.

10. GENERAL LIEN

- 10.1 The Customer agrees that Tauranga Canvas Co Ltd may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of Tauranga Canvas Co Ltd for all sums outstanding under this contract and any other contract to which the Customer and Tauranga Canvas Co Ltd are parties.
- 10.2 If the lien is not satisfied within seven (7) days of the due date Tauranga Canvas Co Ltd may, having given notice of the lien at its option either:
- 10.2.1 Remove such Goods and Services and store them in such a place and in such a manner as Tauranga Canvas Co Ltd shall think fit and proper and at the risk and expense of the Customer; or
- 10.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

11. DISPUTES AND RETURN OF GOODS

- 11.1 No claim relating to the Goods and Services will be considered unless made within seven (7) days of delivery.
- 11.2 No Goods accepted for return without prior approval of Tauranga Canvas Co Ltd.

12. LIABILITY

- 12.1 To the maximum extent permitted by law, warranties implied by customary practice, statute or at law are excluded. Tauranga Canvas Co Ltd's maximum liability for any defective Goods or Services or for any cost, loss, damage or claim arising directly or indirectly in relation to any Goods and Services supplied by it, whether arising from contract, tort (including negligence) or otherwise, will be limited to (a) Tauranga Canvas Co Ltd's option: (a) repairing the Goods; (b) providing the Customer with a refund of the purchase price paid for the affected Goods or Services or a credit for the invoice value of the affected Goods or Services (as the case may be); or (c) replacing the affected Goods or resupplying the Services; provided that in no circumstances shall Tauranga Canvas Co Ltd's maximum aggregate liability exceed an amount equal to \$5 million.
- 12.2 To the maximum extent permitted by law, Tauranga Canvas Co Ltd will not be liable for any removal or reinstallation costs, travel costs or other costs in respect of any defective Goods or Services supplied. Tauranga Canvas Co Ltd is not responsible for any failure or defect in Goods or Services that results partly or wholly from: (a) the act or omission of the Customer or any third party (including as a result of incorrect installation or maintenance of the Goods); or (b) a cause beyond Tauranga Canvas Co Ltd's reasonable control.
- 12.3 Tauranga Canvas Co Ltd is not responsible in any circumstances for any indirect, consequential or special loss, loss of profits or economic loss.

13. COPYRIGHT AND INTELLECTUAL PROPERTY

- 13.1 Tauranga Canvas Co Ltd, owns and has copyright in all designs, goods, specifications, documents and software produced by Tauranga Canvas Co Ltd in connection with the Goods and Services provided pursuant to this contract and the client may use the Goods and Services only if paid for in full and for the purpose for which they were intended and supplied by Tauranga Canvas Co Ltd.

14. CONSUMER GUARANTEES ACT

- 14.1 Where the Customer is in trade and acquires Goods or Services from Tauranga Canvas Co Ltd in trade both parties agree to contract out of the provisions of the Consumers Guarantees Act 1993 ("CGA"). Where the Customer resells or supplies the Goods to other persons in trade who are not consumers under the CGA, the Customer agrees to similarly contract out of the CGA in terms of those sales.
- 14.2 If the terms of paragraph 14.1 above do not apply to the Customer and the Customer is a "consumer" (as defined in the CGA), nothing in these terms limits or excludes any rights that the Customer has under the CGA.

15. HIRE OF EQUIPMENT

- 15.1 Where equipment is hired from Tauranga Canvas Co Ltd:
- 15.1.1 The Customer shall not part with the possession of the equipment and shall not sublet, or sell, or attempt to alienate the equipment in any way, or deal with the equipment in any way that may be prejudicial to Tauranga Canvas Co Ltd.
- 15.1.2 The Customer shall be liable for any damage to or loss of the equipment hired however caused and in the event of any equipment being damaged, lost or stolen the Customer shall pay to Tauranga Canvas Co Ltd the cost of making good the repair to the equipment or the cost of replacing the equipment whichever is the lesser.
- 15.1.3 The Customer shall on request by Tauranga Canvas Co Ltd advise of the whereabouts of any hired equipment and gives Tauranga Canvas Co Ltd irrevocable licence to enter any premises within its control for the purposes of inspecting, repairing, testing or removing the hired equipment and further if the Customer fails to pay any monies owing after the due date Tauranga Canvas Co Ltd may enter any premises and take possession and remove the hired equipment.
- 15.1.4 The Customer shall take proper care of and use the equipment in the appropriate manner. A surcharge will apply to any tarpaulins and equipment returned dirty.

16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Tauranga Canvas Co Ltd agreeing to supply Goods 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 Tauranga Canvas Co Ltd the payment of any and all monies now or hereafter owed by the Customer to Tauranga Canvas Co Ltd and indemnify Tauranga Canvas Co Ltd 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.

17. MISCELLANEOUS

- 17.1 Tauranga Canvas Co Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by Tauranga Canvas Co Ltd 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 Tauranga Canvas Co Ltd has under this contract.
- 17.3 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.