

## CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CLIENT'S TRADE NAME: \_\_\_\_\_

CLIENT'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_ \_\_\_\_\_ Postcode: \_\_\_\_\_

### COMMERCIAL CLIENTS ONLY

Company Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

### DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_ \_\_\_\_\_ Postcode: \_\_\_\_\_

ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

### TRADE REFERENCES

Business Name 1: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Business Name 2: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Business Name 3: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

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I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Mike Barker Contractors Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

**SIGNED (CLIENT):** \_\_\_\_\_ **SIGNED (AGENT):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

### WITNESS TO CLIENT'S SIGNATURE:

**Signed:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Definitions**

- 1.1 "Agent" means Mike Barker Contractors Ltd, its successors and assigns or any person acting on behalf of and with the authority of Mike Barker Contractors Ltd.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Agent to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Agent and the Client in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Agent.

**3. Change in Control**

- 3.1 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.

**4. Price and Payment**

- 4.1 At the Agent's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by the Agent to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Agent's current price list; or
  - (c) the Agent's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Agent reserves the right to change the Price if a variation to the Agent's quotation is requested.
- 4.3 At the Agent's sole discretion, a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Agent, which may be:
  - (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Agent.

- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Agent.

- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Delivery of Goods**

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Client or the Client's nominated carrier takes possession of the Goods at the Agent's address; or
  - (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At the Agent's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Agent may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by the Agent to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Agent will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

**6. Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.

- 6.3 If the Client requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

**7. Access**

- 7.1 The Client shall ensure that the Agent has clear and free access to the work site at all times to enable them to undertake the Services. The Agent shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Agent.
- 7.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Agent. The Customer agrees to indemnify the Agent against all costs incurred by the Agent in recovering such vehicles in the event they become bogged or otherwise immovable.

**8. Compliance with Laws**

- 8.1 The Client and the Agent shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 8.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 8.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.4 The Client agrees to the Agent carrying out credit checks on them with a credit reporting agency for a purpose related to the Client's application for credit, or ongoing administering the Client's account with the Agent including debt collection. This will require the Agent to give the Client's information to the credit reporting agency as well as the credit reporting agency providing information about the Client to the Agent.

**9. Title**

- 9.1 The Agent and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid the Agent all amounts owing to the Agent; and
  - (b) the Client has met all of its other obligations to the Agent.
- 9.2 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a Bailee of the Goods and must return the Goods to the Agent on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Agent and must sell, dispose of or return the resulting product to the Agent as it so directs.
  - (e) the Client irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods.
  - (f) the Agent may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Agent.
  - (h) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**10. Personal Property Securities Act 1999 ("PPSA")**

- 10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Agent to the Client (if any) and all Goods that will be supplied in the future by the Agent to the Client.
- 10.2 The Client undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Agent; and
  - (d) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 The Agent and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 146 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Agent under clauses 10.1 to 10.5.

**11. Security and Charge**

- 11.1 In consideration of the Agent agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 11.3 The Client irrevocably appoints the Agent and each director of the Agent as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

**12. Client's Disclaimer**

- 12.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

**13. Defects**

- 13.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.

**14. Returns**

- 14.1 Returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 13.1; and
  - (b) the Agent has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
  - (d) the Agent will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 Returned Goods may (at the Agent's sole discretion), incur restocking and handling fees.
- 14.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

**15. Warranty**

- 15.1 Subject to the conditions of warranty set out in clause 15.2 the Agent warrants that if any defect in any workmanship of the Agent becomes apparent and is reported to the Agent within three (3) months of the date of delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
  - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Agent; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Agent shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.
  - (c) in respect of all claims the Agent shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## PERSONAL GUARANTEE

I ("Customer") \_\_\_\_\_

Of (Address) \_\_\_\_\_

("Customer") I, HEREBY UNCONDITIONALLY AND IRREVOCABLY GUARANTEE to you due payment of all moneys owing by the 20<sup>th</sup> of the following month of purchases.

1. THIS guarantee is a continuing guarantee and is in addition to any other guarantee or security held by you at any time and may be enforced without you first having taken step against the Customer, any other person or under any other guarantee or security.
2. No amendment of any document or granting of credit, extension of former credit or granting of time to the Customer and no waiver, indulgence or neglect to sue on your part nor the release of any securities held by you nor the liquidation of the Customer nor any other matter or thing whatsoever which could operate to impair or discharge my liability, will affect my liability to you hereunder and as between you and me I shall be deemed to be a principal debtor and shall be liable to you accordingly.
3. THIS Guarantee will commence on the date it is signed and will continue in full force and effect at all times notwithstanding that the Customer's account with you may, from time to time, be in credit.
4. WITHIN seven (7) days form my receipt of notice in writing of any default on the part of the Customer, I will make payment to you of all sums in respect of which such default has been made or will perform any obligation owned by the Customer to you.
5. I agree to indemnify you against all losses, damages and costs suffered and incurred by our arising out of:
  - a. Any non-payment of any amount by the Customer or any breach of its obligations contained or implied in an agreement with the Customer: and/or
  - b. all costs (including costs on a solicitor client) and expenses reasonably incurred by you in enforcing any of the provisions of this guarantee or any agreement with the Customer.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Please Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_