

# DIESEL DISTRIBUTORS LIMITED

PO Box 12-845 Penrose. 1016B Great South Road, Penrose.

Tele: (09) 525 4300. Fax: (09) 525 4301.

Email: kevin@dieseld.co.nz

## 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: .....

Accounts contact: Name: ..... Fax: .....

Email: .....

### 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 Diesel Distributors 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.

Signed ..... Print Name ..... Designation .....

Dated this ..... day of ..... 20.....

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "DDL" shall mean Diesel Distributors 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 DDL.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by DDL to the Customer; and
- 1.3.2 all Goods supplied by DDL to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by DDL; and
- 1.3.4 all Goods supplied by DDL and further identified in any invoice issued by DDL 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 DDL or that are stored by the Customer in a manner that enables them to be identified as having been supplied by DDL; and
- 1.3.6 all of the Customer's present and after-acquired Goods that DDL has performed work on or to or in which goods or materials supplied or financed by DDL 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" shall also mean all goods, products, services and advice provided by DDL to the Customer and shall include without limitation the distribution and supply of diesel parts and all associated goods and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by DDL to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between DDL and the Customer and includes all disbursements eg charges DDL pay to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

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

### 5. PAYMENT

- 5.1 Unless payment is due in cash at the time of placement of the order payment for Goods shall be made in full on the 20<sup>th</sup> of the month following invoice.
- 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 DDL 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.

### 6. QUOTATION

- 6.1 Where a quotation is given by DDL for Goods:
- 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 DDL reserve the right to alter the quotation because of circumstances beyond its control including currency fluctuations.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.
- 6.3 Any quotation given may change, without notice, due to currency fluctuations.

### 7. RISK

- 7.1 The Goods remain at DDL's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when DDL gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to DDL making time of the essence.

### 8. AGENCY

- 8.1 The Customer authorises DDL to contract either as principal or agent for the provision of Goods that are the matter of this contract.
- 8.2 Where DDL enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

### 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Goods supplied by DDL passes to the Customer only when the Customer has made payment in full for all Goods provided by DDL and of all other sums due to DDL by the Customer on any account whatsoever. Until all sums due to DDL by the Customer have been paid in full, DDL has a security interest in all Goods.

- 9.2 If the Goods 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 shall remain with DDL until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be assigned to DDL as security for the full satisfaction by the Customer of the full amount owing between DDL and Customer.

- 9.3 The Customer gives irrevocable authority to DDL to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if DDL believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. DDL 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. DDL may either resell any repossessed Goods 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 credit the Customer's account with the invoice value thereof less such sum as DDL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Goods are retained by DDL pursuant to clause 9.3 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.

- 9.5 The following shall constitute defaults by the Customer:

- 9.5.1 Non payment of any sum by the due date.
- 9.5.2 The Customer intimates that it will not pay any sum by the due date.
- 9.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
- 9.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to DDL remains unpaid.
- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.

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

### 10. PAYMENT ALLOCATION

- 10.1 DDL may in its discretion allocate any payment received from the Customer towards any invoice that DDL determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by DDL, payment shall be deemed to be allocated in such manner as preserves the maximum value of DDL's purchase money security interest in the Goods.

### 11. DISPUTES AND RETURN OF GOODS

- 11.1 No claim relating to Goods will be considered unless made within forty eight (48) hours of delivery.
- 11.2 No Goods will be accepted for return without prior consent of DDL. Any Goods considered for return must be in original packaging and in undamaged condition and accompanied by the number and date of supplying invoice. The Customer is liable for all costs associated with any Goods accepted for return.

### 12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon DDL 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 DDL, DDL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 DDL shall not be liable for:

- 12.2.1 Any loss or damage of any kind whatsoever 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 Goods provided by DDL to the Customer; and
- 12.2.2 The Customer shall indemnify DDL 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 DDL or otherwise, brought by any person in connection with any matter, act, omission, or error by DDL its agents or employees in connection with the Goods.

### 13. WARRANTY

- 13.1 Manufacturer's warranty applies where applicable.

### 14. CONSUMER GUARANTEES ACT

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

### 15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

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

### 16. MISCELLANEOUS

- 16.1 DDL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

- 16.2 Failure by DDL 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 DDL has under this contract.
- 16.3 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.

*Please Fax or Email to Diesel Distributors*

*Fax # +64 9 525-4301*

*Email [kevin@dieseld.co.nz](mailto:kevin@dieseld.co.nz)*