



TCI New Zealand (1995) Limited

PO Box 71 032, Rosebank, Auckland 1348,

48 Honan Place, Avondale, Auckland 1206, New Zealand

Phone: +64 9 820 1520 **Fax:** +64 9 820 1521 **Web:** www.tcinz.co.nz

APPLICATION FOR CREDIT ACCOUNT

Buyer's Name:	
Contact Name:	
Position:	
Postal Address:	
Phone Number:	
Mobile Number:	
Fax Number:	
Email:	
Nature of Business/Occupation:	
Name of Legal Entity (if trading name not legal name):	
Delivery Address (if different from above):	
Length of time in Business:	
Any previous business name or Contact's previous employer if business has been operating for less than two years:.....	
Estimated Annual Purchases from TCI:	
Credit Limit Requested from TCI:	NZD.....Per month
Is Buyer a Limited Liability Company?	Yes / No If Yes, Company No:.....
Name and residential address of all Directors:	1..... 2.....

Buyer's Accountant's Name:
Address..... Phone:..... Fax:.....
Buyer's Solicitor's Name:
Address..... Phone:..... Fax:.....
Trade Reference Information: (Please do not include Power/Telephone/Rent or other utility companies)
Name:..... Phone:..... Fax:.....
Name:..... Phone:..... Fax:.....
Name:..... Phone:..... Fax:.....
Bank & Branch
Bank:..... Branch:.....

Buyer's Declaration:

I/We apply for a credit account with TCI New Zealand (1995) Limited (*TCI*).

I/We authorise any person or company to provide TCI with such information as it may require in association with its provision of credit and in response to credit enquiries by TCI.

I/We authorise TCI to furnish to any third party any details of any subsequent dealings that I/we may have with TCI relevant to my/our creditworthiness.

I/We have read and understood the Conditions of Sale which form part of, and are intended to be read in conjunction with, this Credit Application and agree to be bound by those Conditions of Sale.

I/We sign this declaration on behalf of Buyer:

Name(s) of Signatories:	
Signature(s):
Position Held:	
Buyer's Name:	
Date:	

TCI NEW ZEALAND (1995) LIMITED CONDITIONS OF SALE

1. Applicability

- 1.1 These conditions apply to all sales by which any customer (*Buyer*) acquires goods (including any related services) from TCI New Zealand (1995) Limited or any related entity (*TCI*).
- 1.2 These conditions override and are in substitution for any conditions stipulated or referred to in writing or orally by Buyer.
- 1.3 Nobody claiming to act on TCI's behalf is authorized to waive or change these conditions orally. Waivers or changes are effective only made in writing and signed on TCI's behalf.
- 1.4 Buyer acknowledges that all purchases from TCI are made for business purposes. As between TCI and Buyer, the guarantee provisions of the Consumer Guarantee Act 1993 are expressly excluded and shall not apply to any supplies of goods and services by TCI to Buyer.
- 1.5 In these conditions the term *goods* includes any services provided by TCI in relation to the goods or otherwise, and all proceeds of, and accounts receivable in relation to, those goods.

2. Prices

- 2.1 Stated or quoted prices are:
 - 2.1.1 Exclusive of GST, which is payable in addition.
 - 2.1.2 Based on current factory costs, exchange rates, and duty rates. TCI reserves the right to alter prices should any of these factors change after an order is placed.
- 2.2 TCI may alter prices without notice, and the purchase price of goods may be different from the price quoted when the goods are ordered. Buyer shall make all payments due to TCI in full without any deduction, whether by way of set-off, counterclaim, or any other equitable or legal claim.

3. Payment

- 3.1 Terms of payment are 20th of the month following the date of invoice, with due allowance for bank clearance of funds i.e. if payment is not made in cleared funds, payment must be made in sufficient time to enable clearance of the payment before the 20th of the month following the date of invoice.
- 3.2 If default is made in payment by the due date, TCI may (in addition to other rights) charge simple interest of 1.5% per month from the date payment became due until and including the date upon which TCI receives full payment, before and after judgment. Buyer shall be liable to pay all expenses and legal costs of TCI in relation to obtaining payment upon a solicitor and own client basis.

4. Delivery Dates

- 4.1 Although TCI will endeavour to meet any stated delivery date, it is not liable for and Buyer is not entitled to cancel its order for non-delivery or late delivery, howsoever caused, or for failure to deliver by any specific method or by any particular vehicle, vessel, or craft. TCI will not be liable for any losses including direct and consequential losses for failure to deliver any upon any date stipulated by the Buyer.
- 4.2 Unless otherwise stated in writing, delivery by TCI to a carrier constitutes delivery to Buyer.

5. Retention of Title

- 5.1 Notwithstanding any period of credit, ownership of goods remains with TCI and will not pass to Buyer until all goods supplied have been paid for in full and until that time Buyer agrees that:
 - 5.1.1 Buyer holds the goods as bailee for and is in a fiduciary relationship with TCI.
 - 5.1.2 Buyer must store the goods so that they can be readily identified as belonging to TCI.
 - 5.1.3 Buyer is authorized by TCI to dispose of the goods in the ordinary course of its business, but only as TCI's agent. However Buyer must not represent to any third party that it is in any way acting for TCI and TCI is not bound by any contract between Buyer and any third party. The Buyer's authority to dispose of the goods in the ordinary course of Buyer's business is revoked immediately if TCI terminates this contract, or if TCI notifies Buyer in writing that this authority is revoked.

5.1.4 If Buyer has not paid in full for the goods by the due payment date, TCI or its agents may (in addition to its other rights) enter Buyer's premises (or other premises to which Buyer has access and where any of the goods subject of the contract are stored) during normal business hours, without notice and search for and recover its goods, and may resell any of them, without incurring any liability to Buyer or any person claiming through Buyer. Buyer may not revoke the permission granted in this sub-clause.

5.1.5 Buyer will give TCI at least 7 days notice before applying to the Court for the appointment of a Liquidator (whether interim or not), and is not entitled to remain in possession of TCI's goods from the date of such notice.

5.2 The provisions of this clause 5 shall be read and subject to the provisions of Clause 6 below.

6. Personal Property Securities Act 1999

6.1 For the purposes of the Personal Property and Securities Act 1999 (*PPSA*), Buyer agrees these conditions constitute and create a security agreement. Buyer grants a security interest in favour of TCI in all Buyer's present and after-acquired goods supplied to Buyer by TCI, to secure the payment by Buyer to TCI of all amounts Buyer may owe TCI from time to time and at any time in respect of such goods.

6.2 TCI maintains a lien on any moulds, dies or any other tooling provided by Buyer and in the possession of TCI, and over any other property of Buyer in the possession of TCI. Any such lien will not be removed until full settlement of all outstanding moneys owed to TCI is received. TCI may sell such moulds, dies or any other tooling within New Zealand or overseas and net sale proceeds after deducting all expenses will be credited to Buyer's account with TCI. Buyer grants TCI a security interest over the moulds, dies and tooling and any other property of Buyer in the possession of TCI.

6.3 TCI may at its discretion and in such manner as TCI determines allocate payments made by Buyer for all and any goods in such manner as TCI determines, include any manner required to preserve any security interest that TCI has over the goods and other property.

6.4 Until payment is made to TCI, Buyer agrees to store the goods in a manner which permits them to be identified and cross-referenced to particular invoices for the goods.

6.5 To the extent permitted by law, if Buyer defaults under these conditions or under any other payment obligation to TCI:

6.5.1 Each security interest created in favour of TCI will become immediately enforceable.

6.5.2 TCI may at any time, by notice to Buyer, declare all or any part of monies owing to TCI to be due and payable immediately, upon demand or at a later date as TCI may specify.

6.5.3 TCI may take possession of and either sell or retain the goods, and pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realization of, the goods.

6.6 Buyer:

6.6.1 Waives any right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to TCI's security interests;

6.6.2 Agrees that nothing in sections 114(1)(a) and 133 and 134 of the PPSA shall apply to these Conditions of Sale and any contract between Buyer and TCI or the security agreements between them, and waives Buyer's rights under sections 121,12,129,131, and 132 of the PPSA.

6.7 Buyer shall give written notice to TCI immediately upon any change of name of Buyer.

6.8 On being requested by TCI, Buyer shall promptly do all things (including signing of document) and provide all information necessary to enable TCI to perfect and maintain the perfection of any and each security interest granted to TCI by Buyer.

7. Risk

7.1 Notwithstanding the provisions in Clause 5, the risk in the goods will pass to Buyer on delivery.

8. Insurance

- 8.1 Insurance is Buyer's care unless otherwise arranged with TCI in writing before dispatch of goods.

9. Claims & Limitation of Liability

- 9.1 Subject only to mandatory liability or guarantee imposed by statute, and without prejudice to any such rights granted to Buyer:

9.1.1 All warranties, descriptions, representations, or conditions, whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise, and all specific conditions, even though such conditions may be known to TCI, are expressly excluded;

9.1.2 TCI shall not be liable in any way whatsoever to Buyer or third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever, whether direct, indirect, special, or consequential, and all such liability is expressly excluded and;

9.1.3 The liability of TCI in respect of any order of goods shall in any event be limited to the lesser of the purchase price of the goods or services complained of, the cost of replacing the defective goods or resupplying the defective services, and the actual loss or damage suffered by Buyer excluding any consequential loss.

- 9.2 Subject to any statutory rights and remedies that Buyer may have in respect of any claim by Buyer which established that the goods were defective, Buyer's rights and remedies shall be limited in accordance with Clause 9.1.3, and shall be subject to the following conditions:

9.2.1 All claims must be received by TCI within seven (7) days of delivery of the goods or provision of the services (as appropriate) and, where applicable, the dispatch number and/or invoice number must be quoted by Buyer;

9.2.2 All claims must specifically identify the defect and, where possible in relation to goods, by accompanied by the defective goods or a sample thereof;

9.2.3 TCI shall have a reasonable opportunity to investigate the claim; and

9.2.4 TCI may at its complete discretion, replace or give credit for the goods and services supplied and established to be defective, and this replacement or credit shall be deemed to fully satisfy any claim by Buyer in respect of any such goods or services.

- 9.3 If TCI replaces defective goods, it shall deliver such goods to Buyer at Buyer's risk and expense.

10. Goods Returned for Credit

- 10.1 TCI is not obliged to accept the return of any goods for credit. Requests for goods to be returned for credit will be considered only if received in writing within seven days of the delivery of the goods and quoting the invoice number, and if the goods are in the same condition as dispatched. TCI may grant or refuse any such requests at its sole discretion.

11. Buyer's Undertakings Relating to Consumer Guarantees Act 1993

- 11.1 Buyer undertakes in relation to goods it acquires from TCI.

11.1.1 Not to give any express written guarantee on behalf of TCI except with TCI's express written approval.

11.1.2 That it will not use TCI's goods for any purpose for which they are not suitable, and it will (wherever appropriate) correctly advise its customers as to the purposes to which, they should or should not be put.

11.1.3 That any literature that it may supply and which relates to TCI's goods will comply with the Consumers Guarantees Act 1993.

11.1.4 To notify TCI immediately in writing of any claim Buyer may receive pursuant to the Consumers Guarantees Act 1993, giving details of TCI goods concerned, and claimants contact information.

11.1.5 To effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever it agrees to supply TCI's goods to Buyer's own customer, for the purposes of that customer's business.

12. Buyer's Indemnity

- 12.1 Buyer indemnifies TCI against liability (including liability to claims, costs, and expenses defending claims) which would not have arisen had Buyer complied with the undertakings set out in Clauses 5 and 11 above.

13. Termination

- 13.1 TCI may (in addition to its other rights) terminate all contracts with Buyer if Buyer fails to comply with any of these conditions or other terms of agreement with TCI or commits an act of bankruptcy, or (being a company) has a receiver appointed or goes into liquidation or administration, or compounds or arranges with its creditors, or if TCI has reasonable grounds to believe that its goods have been or will be destroyed, damaged or endangered or removed from Buyer's normal place of business (except in the ordinary course of trade). Buyer irrevocably agrees that TCI or its agents may enter Buyer's premises (or other premises to which Buyer has access and where any of the goods are stored) during normal business hours, without notice, and search for and recover its goods, and may resell any of them, without incurring any liability to Buyer or any person claiming through Buyer.
- 13.2 Upon TCI becoming entitled to terminate a contract with Buyer, TCI shall also be entitled to terminate all other contracts with Buyer so far as they are unfulfilled, without prejudice to the TCI's rights to recover all monies owing to it in respect of deliveries already made and services already provided. TCI shall be entitled to dispose of the balance of goods contracted for, and Buyer shall indemnify TCI for any loss in price incurred by it on realization against that price at which, such goods were contracted to be bought by Buyer.

14. General

- 14.1 Nothing contained in these conditions shall be deemed to exclude or restrict any rights Buyer may have under the Fair Trading Act 1986. If the provision in these conditions illegal, invalid or unenforceable, the validity and enforceability of the remaining provisions will not be affected. Any failure or delay in the part of TCI in exercising its rights and remedies and any granting of time compromise or other indulgence shall not operate as a waiver of TCI's rights under the foregoing provisions and shall remain enforceable unless expressly waived in writing by a Director of TCI.