THE A/C SHOP LTD

**ACCOUNT APPLICATION FORM (v230311)**

**Applicant's Full Legal Name** (i.e. not trading name): (“the Customer”)

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

**Trading as:** …………………………………………………..**Years in Business**:………............

**Postal Address** ……………………………...................................................................................... Suburb:………………………………………………….

Town/City:…......................................................................................................... Post Code:………………………………………………

**Physical Address**: ……………………………….………………………………...………………………..

Suburb ………………………………………………………………………… Town/City:………………………………………………

**Nature of Business**:…………………………………………………………………

**Email Address**:………………………………………………………………............................... **MONTHLY STATEMENT BY EMAIL**  **Yes No**

**Telephone**: ( )………………………………………………..Fax: ( )……………………………………………Mobile:…………………………………

**Contact Name**s:(1)……………………………………………………………………….. Position:……………………………………………………………

(2) …………………………………………………………………………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**

Name of Accountant: ...................... Ph: ( )............................................................

Name of Solicitor ....................... Ph: ( )............................................................

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| --- |
| **TRADE REFERENCES** |
| **Company Contact Name Phone Number Account open since** |
|  |
|  |

I have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to A/C Shop Ltd 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 .

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

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

On behalf of.(Applicant name)........................................................................................................................Date............................................................

**Personal Guarantor**

Signed............................................................................Name.......................................................................in his/her personal capacity as guarantor.

**PLEASE FAX BACK TO 09-837-8697 OR SEND BY MAIL TO: THE A/C SHOP LTD, PO BOX 21-645, HENDERSON, AUCKLAND 0650**

***DEFINITIONS***

# "A/C Shop" shall mean The A/C Shop Limited, or any agents or employees thereof.

# "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods from A/C Shop.

# "Goods" shall mean:

## All Goods of the general description specified on the front of this agreement and supplied by A/C Shop to the Customer; and/or

## All Goods supplied by A/C Shop to the Customer; and/or

## All inventory of the Customer that is supplied by A/C Shop; and/or

## All Goods supplied by A/C Shop and further identified in any invoice issued by A/C Shop to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and/or

## All Goods that are marked as having been supplied by A/C Shop or that are stored by the Customer in a manner that enables them to be identified as having been supplied by A/C Shop; and/or

## All of the Customer's present and after-acquired property in which goods or materials supplied or financed by A/C Shop have been attached or incorporated in property that would otherwise belong to the Customer.

## The above descriptions may overlap but each is independent and does not limit the others.

# "Price" shall mean the cost of the Goods as agreed between A/C Shop and the Customer and includes all disbursements such as charges A/C Shop may pay to others on the Customer's behalf including but not limited to the importing and sale of motor vehicle parts and any fee or charge associated with the supply of Goods by A/C Shop to the Customer.

# ***ACCEPTANCE***

# Any instructions received by A/C Shop from the Customer for the supply of Goods shall constitute a binding contract and the Customer will be deemed to have accepted the terms and conditions contained herein.

***COLLECTION AND USE OF INFORMATION***

# The Customer authorises A/C Shop 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 A/C Shop to any other party.

# The Customer authorises A/C Shop to disclose any information obtained to any person for the purposes set out in clause 6.

# Where the Customer is a natural person the authorities under clauses 6 and 7 are authorities or consents for the purposes of the Privacy Act 1993.

# ***PRICE***

# Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount that such Goods are sold by A/C Shop at the time of the contract. A list of prices can be found on A/C Shop’s website www.acshop.co.nz. Prices do not include GST (unless stated otherwise), any freight charges or any credit card merchant fees. These costs will be itemised in the Customer’s invoice.

# 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 A/C Shop between the date of the contract and delivery of the Goods.

# ***PAYMENT***

# Payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date") without any deduction, set off or counter claim whatsoever.

# Interest may be charged on any amounts owing after the due date at the rate of 2.5% per month or part month.

# Any expenses, disbursements and legal costs incurred by A/C Shop in the enforcement of any rights contained in this contract shall be payable by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

# Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is cleared by A/C Shop’s Bank.

# A deposit of 10% may be required and shall be payable if requested by A/C Shop.

# ***QUOTATION***

# Where a quotation is given by A/C Shop for the supply of Goods, the following shall apply:

## Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and

## The quotation shall be exclusive of goods and services tax (unless stated otherwise); and

## A/C Shop reserves the right to alter the quotation because of circumstances beyond its control.

# Where Goods are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods.

# ***RISK***

# The Goods remain at A/C Shop's risk until delivery of the Goods to the Customer.

# Delivery of the Goods shall be deemed complete when A/C Shop gives possession of the Goods directly to the Customer to a carrier, courier, or other bailee for purposes of transmission to the Customer.

# ***TITLE AND SECURITY - PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)***

# Title in any Goods supplied by A/C Shop passes to the Customer only when the Customer has made payment in full for all Goods provided by A/C Shop and, payment in full of all other sums owing to A/C Shop by the Customer on any account whatsoever. Until all sums owing to A/C Shop by the Customer have been paid in full, A/C Shop has a security interest in all of the Goods.

# 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 A/C Shop until the Customer has made payment for all the 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 deemed to be assigned to A/C Shop as security for the full satisfaction by the Customer of the full amount owing between A/C Shop and Customer.

# The Customer gives irrevocable authority to A/C Shop 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 A/C Shop 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.

# A/C Shop 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.

# A/C Shop 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 A/C Shop reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

# Where Goods are retained by A/C Shop pursuant to clause 24 the Customer waives the right to receive notice under s120 of the PPSA and to object under s121 of the PPSA.

# Where a security interest in the Goods is registered by A/C Shop, the Customer waives any rights it has to receive a copy of the verification statement following registration under s148 of the PPSA.

# ***DEFAULT***

# The following shall constitute default by the Customer:

## Non payment of any amounts owing by the due date.

## The Customer’s intimation that it will not pay any amount owing by the due date.

## Any Goods for which payment has not been made, are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize such Goods.

## Any Goods in the possession of the Customer are materially damaged while any amounts owing from the Customer to A/C Shop remains unpaid.

## The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets.

## A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days.

## Any material adverse change in the financial position of the Customer occurs.

# Clauses 20 to 28 (inclusive) survive termination of this contract.

***TERMINATION***

# A/C Shop may terminate this contract immediately on default by the Customer by giving written notice. All amounts owing by the Customer to A/C Shop are immediately due and payable on termination.

## ***SECURITY INTEREST FOR SERVICE PROVIDERS***

# The Customer gives A/C Shop a security interest in all of the Customer's present and after-acquired property that A/C Shop has performed services on or in which goods or materials supplied or financed by A/C Shop have been attached or incorporated.

***PAYMENT ALLOCATION***

# A/C Shop may in its sole discretion allocate any payment received from the Customer towards any invoice that A/C Shop 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 A/C Shop, payment shall be deemed to be allocated in such manner as preserves the maximum value of A/C Shop's purchase money security interest in the Goods.

***GENERAL LIEN***

# The Customer agrees that A/C Shop may exercise a general lien against any Goods or property belonging to the Customer that is in the possession of A/C Shop for all amounts owing and due under this contract and any other contract to which the Customer and A/C Shop are parties.

# If the lien is not satisfied within seven (7) days of the due date A/C Shop may, having given notice of the lien at its option either:

## Remove such Goods and store them in such a place and in such a manner as A/C Shop shall think fit and proper and at the risk and expense of the Customer; or

## Sell such Goods 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 or loss suffered.

***DISPUTES***

# No dispute relating to the supply of Goods from A/C Shop to the Customer will be considered unless written notice of the dispute is given to A/C Shop by the Customer within seven (7) days of delivery.

# If a dispute arises that cannot be resolved between the parties, the parties are to agree upon an independent expert to make a decision. If the parties cannot agree on an independent expert, then on the application of one party, the President of the Auckland District Law Society for the time being will appoint an independent expert. The independent expert’s decision shall be final and binding on all parties.

***LIABILITY***

# The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statues may imply warranties or conditions upon A/C Shop 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 A/C Shop, A/C Shop's liability shall, where it is allowed, be excluded or if not allowed, then be limited to the maximum extent allowed by the relevant statute.

# Except as otherwise provided by clause 36, A/C Shop shall not be liable for:

## Any loss or damage of any kind whatsoever, arising from the supply of Goods by A/C Shop 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 Goods provided by A/C Shop to the Customer; and

## The Customer shall indemnify A/C Shop 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 A/C Shop or otherwise, brought by any person in connection with any matter, act, omission, or error by A/C Shop its agents or employees in connection with the Goods.

## ***WARRANTY***

# Manufacturer's warranties apply where applicable.

# ***CONSUMER GUARANTEES ACT***

# The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from The A/C Shop Ltd for the purposes of a business in terms of section 2 and 43 of the Consumer Guarantees Act 1993.

# ***PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES***

# If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for A/C Shop 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 guarantee to A/C Shop the payment of any and all monies now or hereafter owed by the Customer to A/C Shop and indemnify A/C Shop 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/or obligations contained in this contract. The signatories and the Customer shall be jointly and severally liable under the terms and conditions of this contract including but not limited to payment of all amounts owing and due hereunder.

***VARIATION***

# A/C Shop may vary this contract provided that the variations are reasonable and within the scope of this contract. A/C Shop will notify the Customer, in writing, of any variations.

# ***MISCELLANEOUS***

# A/C Shop shall not be liable for any delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

# Failure by A/C Shop to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any rights or obligations A/C Shop has under this contract.

# 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.

# The laws of New Zealand shall apply to this contract.