

Marketing Chemicals Limited

PO Box 13881, Onehunga, Auckland 1643. 2 Rymer Place, Mangere Bridge, Auckland 2022.

Tele: (09) 634 3862 Fax: (09) 634 3864 Email: office@mchem.co.nz

Account Application

Applicant's full legal name (i.e. not trading name) ("the client").

.....

(Please tick) Ltd Company Individual Sole trader Partnership Other (please state):

Trading as:

Postal address:

Physical address:

Email Address:.....

Contact name & position:

Phone No:.....Mobile No:.....Fax No:.....

Date of Birth: (Please provide copy of passport or motor vehicle licence).....

If a limited liability company - address of registered office:

Date of incorporation: Incorporation no:

Ownership: Full details of Directors:

1 Name:..... Address: Phone no:.....

2 Name:..... Address: Phone no:.....

3 Name:..... Address: Phone no:.....

Financial & professional advisors

Name of accountant: Solicitor:

Bank:..... Branch: Acct No:

Trade References			
Company	Contact name	Phone number	Account open since

General description of services to be provided:

I warrant to Marketing Chemicals Limited:

1. that the above information is to the best of my knowledge, information and belief true and correct; and
2. that I have carefully read and agree to be bound by the terms and conditions as printed overleaf; and
3. that I am duly authorised to make this credit account application on behalf of the applicant and of anyone duly authorised to enter into future contracts on behalf of the applicant.

I also acknowledge that pursuant to the personal guarantee contained in the terms and conditions that I am also signing this application form in my personal capacity.

Signed Print name Position

Dated this day of 20

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

TERMS OF TRADE

1. **What is the purpose of this agreement?**
 - 1.1 This agreement sets out the terms that apply to the relationship between you and your agent(s) and/or principal(s) ("you" and "your") and **Marketing Chemicals Limited** and our agent(s) ("we", "us" and "our").
2. **What information about you can we collect?**
 - 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement and the provision of our products and performance of our services.
 - 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
 - to give effect to the provision of our products and performance of our services;
 - to enforce our obligations under this agreement or any additional agreement;
 - when authorised by you or required by law;
 - to assess credit worthiness of you and any guarantors; and
 - to market any of our products and services.
 - 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.
3. **What are our products and services?**
 - 3.1 "Product(s)" and "service(s)" means and includes without limitation:
 - industrial and cleaning chemicals, solvents, substances, equipment, units, accessories and materials (whether separate, attached to something or the subject of our services) supplied by us;
 - manufacturing, supply, maintenance and delivery; and
 - agency fees, charges and out of pocket expenses incurred by us,identifiable in any document or electronic record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or as ours by marking or manner of storage.
4. **What is the price?**
 - 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses. If no price is stated, the price will be the standard amount at which that we provide the products and services at the time of your request. The price is subject to reasonable change due to variations to the products and services or circumstances beyond our control.
5. **What if we give you a quote?**
 - 5.1 The quote will be valid for thirty (30) days and exclusive of GST, unless stated otherwise.
 - 5.2 The quote will be subject to these terms and any additional terms stated on the quote.
 - 5.3 You will be responsible for increased costs resulting from any subsequent changes to a quote due to any inadequate or inaccurate information, request/requirement for additional products and services or variations.
 - 5.4 You can only accept quotes in writing and we may withdraw a quote at any time prior to your acceptance.
 - 5.5 We may alter the quote due to circumstances beyond our control or clerical or computer error.
6. **When and how do you pay us?**
 - 6.1 You agree to pay us in full and without set-off, deduction, counterclaim or retention:
 - for credit account holders - on or before the 20th day of the month following the date of our invoice, unless required otherwise;
 - for those without credit accounts - before delivery/on pick up, unless required otherwise;
 - interest on any amount you owe after the due date at 2.5% per month/part month;
 - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
 - a deposit as required.
 - 6.2 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
 - 6.3 If you have given a credit card, we may require a retention equal to the value of the products and services and deduct the same from your credit card. Each credit card payment will incur a surcharge of 2.5% of the value of the payment.
7. **What warranties and limitations apply?**
 - 7.1 Manufacturers' and third party warranties (where applicable).
 - 7.2 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 and Sale of Goods Act 1908 to the extent permissible by law.
 - 7.3 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control, such as supplier delays.
 - 7.4 Samples shown to you may differ from products provided to you.
 - 7.5 Subject to applicable insurance and 7.1-7.4, if we are deemed liable for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, our total liability is limited to the value of products and services provided to you.
8. **What if you wish to make a claim in relation to our products and services?**
 - 8.1 Special order, indent and custom made products cannot be returned unless due to fault/defect.
 - 8.2 Subject to clause 8.1, claims in relation to our products and services are subject to the following:
 - for claims relating to faulty/defective products and services, you notifying us within thirty (30) days of delivery of the products;
 - for claims not relating to faulty/defective products such as short or incorrect supply, you notifying us within seventy-two (72) hours of pick up/delivery;
 - the products having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, lack of maintenance, misuse, accident or modification or work by a unauthorised third party;
 - us repairing or replacing defective products or performing further services at our discretion; and
 - a restocking fee equal to 15% of the value of the returned product will apply.
 - 8.3 Any products the subject of a claim under 8.2 cannot be destroyed or removed from the premises until we have inspected the same or waived our right to do so in writing.
9. **When will the products and services be provided?**
 - 9.1 We will use our best endeavours to deliver the products and services at the time agreed between you and us; however, the time of delivery is not an essential term of this agreement and if you fail to accept delivery then the products will be deemed to be delivered at the agreed time. We may partially deliver products listed in one order and if we fail to deliver an instalment that failure will not give rise to a right of cancellation.
 - 9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery site or your premises.
 - 9.3 We are responsible and assume risk for the products until delivery in accordance with 9.2, pick up by you or the passing of ownership under 11.1, whichever comes first. The responsibility for insurance will pass upon delivery or transfer of ownership in accordance with this clause.
10. **For what are you responsible?**
 - 10.1 You are responsible for and warrant that all:
 - you have provided and will continue to provide us with all information and assistance required to enable us to carry out our obligations under this agreement; and
 - information, plans and drawings on which we base our products and/or services are accurate and complete. You will be responsible for the cost of additional products and services required as a result of inaccuracy or incompleteness.
 - 10.2 If you do not meet your obligations under 10.1 adequately, any and all loss, damage and/or costs will be your sole responsibility.
11. **What ownership and security rights do we have?**
 - 11.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.
 - 11.2 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:
 - authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
 - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
 - waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
 - that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
 - waive your rights as listed under s 107(2) of the PPSA; and
 - give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.
 - 11.3 Where applicable, we own all existing and new intellectual property rights connected to the products and services.
12. **What if you want to vary the products and services to be provided?**
 - 12.1 All requests and orders are subject to these terms and conditions and no products or services may be varied unless both parties agree to the variation in writing prior to manufacturing, ordering from suppliers or dispatch of products, whichever comes first. If we have reasonably relied on your original instructions then you will be responsible for payment of the original price of the products and services.
13. **When can a party cancel this agreement?**
 - 13.1 Subject to 13.2-13.5, either party may cancel this agreement at any time by giving seven (7) days prior written notice.
 - 13.2 We have the right by seven (7) days prior written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services and/or close your credit account, if you default by:
 - failing to pay or indicating you will not pay any sum owing by the due date;
 - any of your creditors seizing or indicating they will seize any products provided to you;
 - products in your possession becoming materially damaged while any amount remains unpaid;
 - being bankrupted, insolvent, under statutory management or put into liquidation;
 - a receiver being appointed over or a landlord possessing any of your assets;
 - a court judgment entered against you remaining unsatisfied for seven (7) days;
 - breaching the terms of this agreement; and
 - an adverse material change in your financial position.
 - 13.3 If you default we may exercise a lien against any products in our possession.
 - 13.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or repossess any products. You will provide reasonable access to such premises and do all things necessary to give effect to our obligations. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
 - 13.5 Cancellation under 13.1 or cancellation or suspension under 13.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders and services will terminate.
14. **Does a personal guarantee apply?**
 - 14.1 If you are a director of a company or the trustee of a trust in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity (jointly and severally) and unconditionally and irrevocably personally undertake as principal debtors to pay everything that the company or trust owes us and to indemnify us against non-payment and/or default.
 - 14.2 Any personal liability of you as director or trustee under clause 14.1 will not exclude the company or trust from the liabilities and obligations contained in this agreement. You will be a principal debtor and not a mere surety. You will not be released from liability under this clause by the granting of time or indulgence, any amendment to these terms or any other security interest, or any matter whatsoever.
 - 14.3 The terms and rights and obligations under 14.1 and 14.2 will continue to apply notwithstanding changes to these terms of trade in accordance with 15.9 and/or prior dealings.
15. **What else is agreed?**
 - 15.1 We may outsource (contract out) part of the work required to perform our services, you agree to pay for all amounts due in connection with the same.
 - 15.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
 - 15.3 Neither party may assign or transfer their rights or obligations under this agreement to any other party without our prior written consent.
 - 15.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
 - 15.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.
 - 15.6 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will endeavour to resolve the dispute by negotiation within seven (7) days of receiving notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this agreement and any other legal rights either party may have.
 - 15.7 Documentation related to this agreement may be served on you by email.
 - 15.8 Neither party will be liable for any act, omission or failure by that party under this agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of that party, provided that whenever that party becomes aware that such a result has occurred or is likely to occur, that party will notify the other party in writing. Should such an event occur, each party will continue to use its best endeavours to perform its obligations as required under this agreement and take all reasonable steps to abate the event. Performance of any obligation affected by an event shall be resumed as soon as reasonably possible after the termination or abatement of the event.
 - 15.9 We will notify you of any changes to these terms and publish the same on our website - continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.