



## application for trading account

Customer/Buyer to complete in full: Please print in block letters

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Legal Entity Name \_\_\_\_\_

Trading Name \_\_\_\_\_

Postal Address \_\_\_\_\_

Street Address \_\_\_\_\_

Delivery Address if different \_\_\_\_\_

Phone No \_\_\_\_\_ Fax No \_\_\_\_\_ Cell Phone No \_\_\_\_\_

Email \_\_\_\_\_

Nature of Business \_\_\_\_\_

Length of time in business \_\_\_\_\_ Anticipated value of monthly trading \_\_\_\_\_

Bank and Branch \_\_\_\_\_

Sales Contact \_\_\_\_\_ Accounts Contact \_\_\_\_\_

If you are a new owner or a newly created business, please state your previous occupation and address

If taking over an existing business - what is the takeover date / /

**Customer/Buyer to sign below and complete application overleaf**

### Declaration

I have read the terms of trade set out in this document and agree that those terms will apply to all contracts between the Company and the Buyer. I warrant to the Company that the information given in this application is to the best of my knowledge correct.

Name \_\_\_\_\_ Signature \_\_\_\_\_

(I am authorised to enter into this contract for the company)

Position Held or Owner \_\_\_\_\_

### OFFICE USE ONLY

Incorporation Certificate of Limited Liability Company Attached Yes / No

Identification of Principals of Business (for other than limited liability company) attached Yes / No  
e.g. Drivers License, Passport or other Photo ID

Account approved Yes / No

Authorised by \_\_\_\_\_ / /  
Credit Controller

Financing Statement Registered Yes / No

Signature \_\_\_\_\_ Date of Registration / /

Please complete if your business is a limited liability company

Please attach a copy of your Certificate of Incorporation

Company Number \_\_\_\_\_ Year Registered \_\_\_\_\_

Number of Shares Issued \_\_\_\_\_ Share Price \_\_\_\_\_

**Directors**

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

**Principal Shareholders**

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Please complete if your business is a partnership, sole trader, or other

Please include a copy of your drivers license or window ID

(circle one) \_\_\_\_\_ if 'other' please specify \_\_\_\_\_

**Owners**

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

Full Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_ Phone No: \_\_\_\_\_

**Trade References (Not your Bank or Credit Card)**

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone No: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Initial: \_\_\_\_\_

**1. GENERAL**

- a. In these terms of trade unless the context otherwise requires the "Company" means Penguin Wholesalers Whangarei Ltd and its assigns.
- b (i). In these terms of trade unless the context otherwise requires the "Buyer" means the legal entity described as 'Legal Entity Name' as identified front of this form.
  - (ii). The Buyer shall not change the Buyer's name without giving the Company at least seven (7) days written notice.
- c. All goods sold by the Company to the Buyer are sold subject to these terms of trade.
- d. These terms of trade may be modified in writing by agreement between the General Manager or Director of the Company and the Buyer as defined above.
- e. In these terms of trade unless the context otherwise requires the term "Guarantor" means the Principal Shareholders and Directors of the Buyer where the Buyer is a limited liability company.

**2. PAYMENT**

- a. Payment of the goods is due on delivery and shall be paid in cash unless the Company has agreed otherwise with the Buyer in writing.
- b. Payment for the goods shall be made in full and without set off and within the terms agreed between the Company and the Buyer.
- c. The Company reserves the right to charge interest on any amounts unpaid in terms of the agreed terms of payment between the Company and the Buyer at the rate of 2% for the first and for each and any subsequent calendar month or part thereof that any amount due for payment remains unpaid.
- d. Failure by the Buyer to make payment to the Company on due date will constitute a default under these terms of trade and the Company will be entitled to immediately exercise all or any of its remedies in respect of the default.
- e. Disputed accounts: - If any account is in dispute the undisputed portion of the account shall be payable in accordance with the normal terms of trade as provided in this terms of trade document.
- f. Receipt by the Company of any cheque shall not be deemed to be payment until the cheque has been honoured and cleared by the Company's bankers.
- g. The Buyer agrees to pay the Company's debt collection agency costs and/or costs and expenses on a solicitor client basis incurred by the Company as a result of the failure of the Buyer to pay in full the Buyers account with the Company in accordance with these terms of trade.

**3. PRICES**

- a. Goods are sold and will be invoiced at the price charged by the Company at the date of despatch unless a prior agreement has been made regarding price.
- b. All prices are subject to change without prior notice.
- c. All prices are subject to Goods and Services Tax and any other taxes or duties that may apply.

**4. DELIVERY AND ACCEPTANCE**

- a. On receipt of delivery the Buyer shall sign the Company's delivery manifest/delivery documents accepting delivery of the goods. Any variation between the goods delivered and those detailed on the invoice shall be recorded on the Company's manifest/delivery documents/debit/credit form.
- b. The Company shall not be liable or responsible for any loss, damage or expense incurred by the Buyer as a result of non-supply or delay in the despatch or delivery of the goods. The Company may deliver the goods by instalments.
- c. Without affecting the Company's other rights, the Company may suspend supply and delivery of the goods to the Buyer if the Buyer is in default in making payments due to the Company.
- d. Where the buyer has allowed the Company access to premises to make delivery the Company will not be liable for any loss or damage occurring as a result irrespective of fault or whether the buyer was present.
- e. Where the buyer has allowed the Company to deliver to unattended premises or in circumstances where they are otherwise unable to sign the manifest/delivery documents, then the buyer accepts that they will be liable under this agreement to the same extent as if they had signed the manifest/delivery documents. The Company's staff member will sign the manifest/delivery document and this will be accepted by the buyer as Proof of Delivery.

**5. OWNERSHIP/RECOVERY OF GOODS**

Prior to the Buyer paying in full for all goods supplied to the Buyer by the Company, ownership of any such goods will remain with the Company. If the Buyer fails to pay on the due date or breaches these terms, or is placed in receivership, or liquidation or enters into a composition with its creditors, the Buyer authorises the Company to enter any premises to recover goods owned by the Company. The Buyer will indemnify the Company for any losses or cost the Company incurs in recovering such goods. If the premises are those of a third party, the Company may enter and recover the goods as the Buyer's agent. The Company will be entitled to sell any goods held by the Company and apply the proceeds towards amount owed by the Buyer if the Buyer failed to pay any amount. If the Buyer on-sells any goods (supplied by the Company) before ownership has passed to the Buyer, the proceeds of such sale shall be received and held by the Buyer in trust for both the Company and the Buyer. The Buyer's interest as beneficiary under that Trust shall be that portion of the proceeds which does not exceed the Buyer's indebtedness to the Company. The Company's rights in this clause are in addition to its right to take recovery action by way of the issue of Court proceedings for any amounts unpaid under these terms of trade.

**6. RISK**

- a. Risk in the goods shall pass to the Buyer when the goods are delivered to the agreed place of delivery.
- b. No claim for the damage to the goods delivered or claim regarding the goods, including invoicing and delivery will be accepted by the Company unless notified to the Company within 48 hours of delivery date.

**7. CANCELLATION**

- a. The Company will not accept the return of goods ordered by the Buyer without prior written consent. If consent is given all costs and expenses incurred by the Company up to the date of cancellation shall be reimbursed by the Buyer. Any goods returned to the Company must be returned carriage paid by the Buyer, and in good saleable condition.

**8. SALE OF BUSINESS/ALTERATION OF BUSINESS**

- a. These terms of trade are an exclusive contract between the Company and the Buyer to facilitate the supply of goods by the Company to the Trading Business as named on this form.
- b. If there is any change in the Buyer's beneficial ownership of the Trading Business the Buyer must notify the Company in writing of the details of any change, including relevant details of the change in ownership and the date of the ownership change.
- c. The Company will then arrange for a new Terms of Trade form to be completed and evaluated.
- d. Failure by the Buyer to notify the Company of any change in the beneficial ownership of the Trading Business owned by the Buyer will result in the continuing liability and guarantees of the Buyer as set out in this Terms of Trade document for the ongoing supplies to the Trading Business, after the date of the change in beneficial ownership of the Trading Business and up to the point in time that the Buyer formally advises the Company of the change in beneficial ownership.
- e. When the business is sold, payment of all outstanding monies should be paid on due date, settlement date, or within ten days of change of ownership, whichever occurs first.
- f. The Buyer shall not change the Buyer's name without giving the Company at least seven (7) days written notice

Initial:

**9. SECURITY INTEREST**

The Buyer agrees that, for the purposes of the Personal Property Securities Act 1999 ("the PPSA"), the Company has a security interest in the goods supplied by the Company to the Buyer (as detailed) in each invoice supplied to the Buyer as well as the proceeds of such goods. The Buyer agrees to sign any document required for the Company to perfect the Buyer's security interest under the PPSA and authorise the Company to sign any such documents as the Buyer's attorney.

**10. CONTRACTING OUT OF THE PPSA**

To the extent permitted under the PPSA the Buyer agrees to waive rights as debtor. In particular, but without limitation, the Buyer agrees to waive the Buyer's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to any security interest the Company may have in goods supplied to the Buyer from time to time.

**11. GOODS**

The term "goods", as used in these terms and conditions, means all personal property supplied by the Company to the Buyer from time to time, together with the proceeds of such goods and includes: frozen, chilled and dry foodstuffs, packaging and paper products, plastic utensils, all goods and/or services which are described on any invoice, delivery docket or order form, all inventory.

**12. MATTERS BEYOND THE CONTROL OF THE COMPANY**

The Company is not responsible for any defect, failure or delay resulting from the provision of goods, or the acts or omissions of, any third party. In addition, the Company is not liable for any defect, failure or delay in providing goods, or for any loss, damage or deterioration to any goods delivered to the Company, where the same arises due to a cause beyond the Company's reasonable control. In no case will liability extend beyond the value of the goods supplied.

**13. CONSTRUCTION**

a. Any contract containing these terms of trade shall be deemed to be a Contract made in New Zealand and shall be governed by New Zealand Law.

**14. PRIVACY ACT**

Under the terms of the Privacy Act (1 July 1993) the Buyer authorises any person or Company to provide the Company with such information as may be required by the Company in response to the Buyer's credit enquiries. The Buyer authorises the Company to furnish any third parties details of this terms of trade application and any subsequent dealings that the Buyer may have with the Company.

**15. CONSUMER GUARANTEE ACT (CGA)**

- a. Where these terms and conditions would otherwise be subject to the CGA the Buyer agrees that the Buyer is acquiring the Goods for business purposes and that the CGA does not apply to the supply of Goods to the Buyer.
- b. If the Buyer is a consumer as that term is defined in section 2 of the CGA and the Buyer has not contracted out of the CGA under clause 24.1 of these terms and conditions, nothing in these terms and conditions will limit any rights the Buyer may have under the CGA.

**16. ACKNOWLEDGEMENT**

The Buyer acknowledges that it has received a copy of this Terms of Trade document and in particular that this Terms of Trade document constitutes a "Security Agreement" for the purposes of the PPSA. The Buyer further acknowledges that the provisions of clause 5 (OWNERSHIP/RECOVERY OF GOODS) are intended to create a Purchase Money Security Interest in such goods and acknowledges that the Company may register a Financing Statement or Financing Change Statement under the PPSA in the Personal Property Securities Register in respect of this Terms of Trade document.

**17. GUARANTEE – TO BE COMPLETED IF APPLICANT IS A LIMITED LIABILITY COMPANY**

In consideration of the Company agreeing to supply the above named Buyer with goods the Guarantor **HEREBY JOINTLY AND SEVERALLY** agrees with the Company as follows:

The Guarantor shall be responsible (as primary obligor and not merely as surety) for the due payment, performance, fulfilment and observance of all of the obligations of the Buyer to the Company.

The Guarantor personally guarantees payment of all amounts owing by the Buyer to the Company and acknowledges that no indulgence, granting of time, waiver or forbearance to sue, or winding up or bankruptcy will release the Guarantor from liability hereunder.

This guarantee shall be a continuing guarantee to the Company for all debts and obligations whatsoever and whensoever contracted by the Buyer with the Company in respect of goods supplied and this guarantee shall remain in force until all moneys hereby secured are paid.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 200

SIGNED BY ALL COMPANY DIRECTORS AND PRINCIPAL SHAREHOLDERS: (Insert full names of directors and shareholders)

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

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

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

In the presence of: \_\_\_\_\_  
 (Witness signature) \_\_\_\_\_  
 (Full name of witness) \_\_\_\_\_  
 (Occupation) \_\_\_\_\_  
 (Address) \_\_\_\_\_

Initial: