

## CREDIT APPLICATION & TERMS AND CONDITIONS

I/We understand that the trading terms offered by New Touch Industries Pty Ltd are NETT THIRTY (30) DAYS and will undertake to pay all accounts on the due date. I/We understand that in the case of an overdue account credit may be put on hold until the account is brought up to date.

OFFICE USE ONLY	
DATE REC:	.....
CREDIT LIMIT: \$	.....
APPROVED BY:	.....
VEDA/ASIC CHECK:	.....
REP:	..... NOTIFIED: Y/N
CUST. NOTIFIED BY LETTER:	Y/N

BUSINESS NAME: .....

ABN: ..... ACN: .....

ADDRESS: ..... POSTCODE: .....

POSTAL ADDRESS: ..... POSTCODE: .....

PHONE NUMBER: ..... FAX NUMBER: .....

EMAIL ADDRESS: .....

ACCOUNTS PAYABLE CONTACT: ..... HOW LONG AT THIS ADDRESS: .....

TYPE OF BUSINESS: ..... YEAR ESTABLISHED: .....

CREDIT LIMIT REQUESTED PER MONTH: \$.....

NAME AND ADDRESS OF DIRECTORS/ PARTNERS OR PROPRIETORS:

1. ....
2. ....
3. ....
4. ....

TRADE REFERENCES (Relevant to credit request where possible, minimum 3 required please):

- |         | Phone: | Fax/Email: |
|---------|--------|------------|
| 1. .... | .....  | .....      |
| 2. .... | .....  | .....      |
| 3. .... | .....  | .....      |
| 4. .... | .....  | .....      |

I, ..... certify that I am authorised to sign this form on behalf of the above. The information supplied is true and grant permission for New Touch Industries Pty Ltd to check my trading history and verify that the above information is correct. I have read the Terms and Conditions and agree to be bound by the Terms and Conditions referred to on the attached page (also available on [www.newtouchind.com.au](http://www.newtouchind.com.au)).

SIGNATURE: ..... POSITION: .....

DATE: .....

P.O. Box 2033, Bayswater 3153  
Corner of Malvern St & Edelmaier St, Bayswater

Email: [ar@ntiv1.com.au](mailto:ar@ntiv1.com.au)  
Ph: (03) 9720 8248

Webpage: [www.newtouchind.com.au](http://www.newtouchind.com.au)  
Fax: (03) 9720 9852

ABN: 71 162 439 536

## TERMS AND CONDITIONS

### 1. GENERAL

(a) In these terms and conditions "the Company" shall mean New Touch Industries Pty Ltd ACN (162 439 536) to which this application for credit is made and includes its successors and assigns and "the Customer" shall mean the entity which is applying for credit in the application attached or overleaf.

(b) These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer's order form or otherwise).

The Customer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.

### 2. PRICES

(a) Orders are accepted on the condition that the goods and services will be invoiced at the price ruling at the date the goods and services are despatched. Unless specified to the contrary, prices quoted are exclusive of all GST, stamp duty and like levies or taxes and are ex-works. The company may amend prices at any time without prior notice. All quotations provided by the Company are valid for period of (30) days.

(b) Any variation requested by the Customer must be in writing. The Company will charge for and invoice for the requested variation as soon as the variation has been completed.

### 3. PAYMENT

The Customer (approved account holders only) shall make payment to the Company for all goods and services supplied within thirty (30) days from the date of statement unless otherwise agreed in writing. Non account holders will be required to pay prior commencement of any works. The Customer acknowledges that time is of the essence with regard to payment and that any breach of this term will enable the Company at its discretion to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding. A deposit as notified by the Company at the time of order is placed shall be payable by the Customer prior to works and services commencing and such deposit is not refundable. The Customer shall not be entitled to withhold payment of any sums after they become due by reason of any right of set off or counter claim which the Customer may have or alleged to have or for any other reason whatsoever.

Credit card payments shall attract a 2.2% processing fee. The Company will not accept Diners Club cards.

### 4. INTEREST

Should payment remain outstanding beyond the Company's payment terms and at the Company's discretion as outlined in clause 3 above, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at a rate equal to 2% monthly above the overdraft rate being charged by the National Australia Bank on accounts under \$100,000.00 at the time of default.

### 5. COSTS

Should payment remain outstanding beyond the Company's payment terms and at the Company's discretion as outlined in clause 3, the Customer agrees to pay all legal costs (on a solicitor/own Customer basis) and all Mercantile Agent's fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.

### 6. DELIVERY

(a) The Customer will pay all transport costs and insurance to deliver the goods and services to the Customer's premises in the State which the Customer trades. (b) In the event that the Customer specifies a delivery date, the Company shall use its best endeavours to comply with the Customer's requests. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late delivery.

(c) Delivery of the goods and services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

(d) The Customer shall not be entitled to repudiate the agreement as a result of the failure of the Company to deliver the goods and services.

### 7. CLAIMS

(a) It is the responsibility of the Customer to check each delivery to ensure that the delivery is complete and in good condition. The Customer will be deemed to have accepted the goods and services as being in accordance with its order and received in good condition unless it notifies the Company in writing of any claim within seven (7) days of receipt of the goods and services.

(b) The Company will not accept any return of goods unless it has given prior written authorisation for the return and unless the returned goods are accepted by the Company's supplier. The Customer will be responsible for any restocking fees from the Company's supplier. All warranty claims must be returned directly to the Company. The Customer is responsible for payment of any freight or delivery costs to return any goods to the Company unless the Company agrees to pay such costs on the basis that the goods were delivered in a damaged condition.

### 8. JURISDICTION

The proper law of all contracts arising between the Company and the Customer is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State.

### 9. CONSUMER GUARANTEES

(a) Except as provided in these terms and conditions, all express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of the goods and services supplied for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the fullest extent permitted by the applicable law.

(b) All other conditions and warranties, statutory or otherwise and whether express or implied, are hereby excluded to the fullest extent permitted by the applicable law, and no guarantee, other than that expressly herein contained and the statutory guarantee that cannot be excluded or limited under the applicable law, applies to the goods and services supplied to which the guarantee relates, or any accessory or part thereof.

(c) In respect of goods supplied by the Company, the Company's liability liability for a breach of or failure to comply with a guarantee under the Australian Consumer Law (**Australian Consumer Law**) (other than section 51, 52 or 53) for the supply of the goods is expressly limited to:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) if applicable, the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and/or
- (iv) if applicable, the payment of the cost of having the goods repaired.

(d) In respect of services supplied by the Company, the Company's liability liability for a breach of or failure to comply with a guarantee under the Australian Consumer Law for the supply of the services is expressly limited to:

- (i) the supplying of the services again; and/or
- (ii) the payment of the cost of having the services supplied again.

### 11. INDEMNITY

To the extent permissible by law, the Customer will indemnify the Company against any unauthorised express or implied warranty or representation under statute or general law as to merchantability, description, quality, suitability or fitness of the goods or services supplied for any purpose or as to design, assembly, installation, materials or workmanship or otherwise made by any agent, employee or representative of the Customer to a third party. For the avoidance of doubt, a warranty or representation will be unauthorised unless the warranty or representation has previously been made by the Company or authorised by it.

### 12. LIMITATION OF LIABILITY

(a) Nothing in this these terms and conditions shall limit or exclude the liability of the Company for any liability which cannot be limited or excluded by the applicable law.

(b) Subject to sub-clause (a), the Company shall not in any circumstances have any liability to the Customer for any of the following types of loss or damage arising under or in relation to these terms and conditions:

(i) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or

(ii) any indirect or consequential loss or damage whatsoever.

(c) Subject to sub-clauses (a) and (b), the total liability of the Company under or in connection with these terms and conditions whether in contract, tort (including negligence) or otherwise, shall be limited in aggregate for all claims to the amount equaling the sum paid or payable for the goods or services supplied.

(d) Subject to sub-clause (a), the Company shall not be liable for any claim under these terms and conditions unless the claim has been made by the Customer to the Company within 1 (one) month of the date on which such claim became known, or ought reasonably have become known, to the Customer.

### 13. INTELLECTUAL PROPERTY

(a) The Company shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.

(b) If the Customer provides the Company with any specifications, designs or drawings for the production or manufacture of any item or items then the Customer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Customer hereby indemnifies the Company against any claims demands suits or actions in relation thereto.

### 14. RIGHTS OF THE COMPANY TO DISPOSE OF GOODS AND SERVICES

In the event that the Company retains or regains possession of the goods ordered by the Customer and the Customer has not paid for the goods within the Company's terms of trade then the Company may dispose of the goods and may claim from the Customer any loss the Company has suffered in relation to same.

### 15. CHANGE OF OWNERSHIP

The Customer agrees to notify the Company in writing of any change of ownership of the Customer within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.

### 16. CANCELLATION

Orders placed with the Company cannot be cancelled without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

### 17. LIEN

The Customer hereby acknowledges that the Company has a lien over all goods and services in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

### 18. TITLE

(a) Property in any goods and services sold by the Company shall not pass to the Customer until the Customer has paid for the goods and services in full and has paid all other monies outstanding under any other sale of goods and services by the Company to the Customer.

(b) Risk of loss or damage to the goods and services passes to the Customer with possession. Until payment of the purchase price (and all other monies outstanding) the Customer is to insure the goods and services against all risk. Any insurance claim in respect of loss damage or destruction of the items or goods and services is hereby assigned to the Company.

(c) In the event that:-

- (i) the Customer has failed to pay for the goods and services as and when due;
  - (ii) the Customer has breached any of the conditions of this Contract;
  - (iii) the Customer commits an act of bankruptcy or becomes bankrupt;
  - (iv) a controller is appointed to the Customer;
  - (v) the Customer is placed under external administration;
  - (vi) the Customer enters into a scheme of arrangement with its creditors;
  - (vii) execution is issued against the property of the Customer and is returned unsatisfied; or
  - (viii) the Customer is insolvent; and then the Company may retake possession of any of its goods which have been supplied to the Customer and for this purpose the Company may enter any premises belonging to or occupied by the Customer. The Customer hereby grants right of entry to the Company for the purpose of retaking possession of its goods and indemnifies the Company, its servants, agents and employees in relation to any loss or damage occurring as a result of retaking of possession of the goods.
- (d) The Customer hereby indemnifies the Company against any loss or damage to the goods howsoever arising.

(e) The Customer is entitled to resell the goods and services in the usual course of its business but the Company is to be paid from the proceeds of the sale the purchase price owed to the Company (and all other monies outstanding including interest, costs and collection costs) which proceeds, to the extent of the purchase price (and all other monies outstanding including interest, costs and collection costs) shall be kept in a separate account and held by the Customer in trust for the Company.

The Customer shall, on request, disclose to the Company all relevant information regarding the goods and services and any sale thereof by the Customer.

### 19. CHARGE

The Customer hereby charges all its property whatsoever whether currently owned by the Customer or acquired in the future with its indebtedness to the company.

### 20. CONSENT TO CREDIT CHECK - PRIVACY ACT

The Customer acknowledges and authorizes the Company pursuant to the provisions of the Privacy Act to:-

- (a) seek from or give to a Credit Reporting Agency personal information about the Customer at any time after accepting these conditions; and
- (b) Contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Customer and its credit worthiness.

**21. FORCE MAJEURE**

The Company will not be in default or breach of any dealing with the Customer as a result of any event beyond either party's reasonable control (**force majeure**), including but not limited to, any Acts of God, fire, flood, explosion, earthquake, other natural forces, pandemic, epidemic, government restrictions imposed as a result of any pandemic and/or epidemic, war, civil unrest, strike or labour disturbance, provided that the party has not caused such event(s) to occur.

**22. SUB-CONTRACTING**

The Customer hereby authorises the company to sub-contract all or any part of the works that the company has been contracted to carry out. The company in doing so may be required to agree to the sub-contractors terms and conditions of trade and the carrying out of the work by the sub-contractor will deem the Customer also bound by those terms and conditions. The sub-contractor in agreeing to carry out the work on behalf of the company shall also be deemed to have the benefit of these terms and conditions.