

**ENKO GROUP LIMITED
CUSTOMER APPLICATION FORM**

CUSTOMER:	Trade	Private	Other
Limited Liability Company	Partnership	Sole Trader (Please Specify)
Legal Name:			
Company Number if a company / Date of Birth if an individual:			

Postal Address:

Address for Deliveries:

Telephone No: Fax No:

Person Responsible for Ordering.....

Telephone No:Email:

Person Responsible for Payment.....

Telephone No:Email:

Name and Address of Directors / Partners / Proprietors / Shareholders			
Name:	Designation:	Residential Address and Telephone Number:	Date of Birth:
.....

GOODS TO BE SUPPLIED:

Any goods and any associated services supplied by Enko Group Limited (referred to in this form as "us"/"we"/"our") to the customer named above from time to time ("Goods")

CREDIT REFERENCES: Name, address and telephone numbers (minimum of 2 regular established accounts)

1.
.....

2.
.....

DECLARATION AND AGREEMENT:

In consideration of us agreeing to supply Goods and any associated services to the Customer named above, you (or in the case of a Customer that is not a private individual, on behalf of the Customer, you):

1. Agree to the Terms of Trade set out on the reverse side of this form; and
2. Declare that the information supplied in this form is correct.

Full Name: Signed:.....

Designation: Date:.....

GUARANTEE:

In consideration of Enko Group Limited agreeing to supply Goods and any associated services to the Customer at my/our request:

1. I/We unconditionally guarantee to Enko Group Limited the due and punctual payment by the Customer of all moneys payable in accordance with the Terms of Trade set out on the reverse side of this form as and when the same become due and payable by the Customer.
2. I/We agree to be deemed as principal debtor for all accounts held by the Customer with Enko Group Limited.
3. I/We agree that this guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of account and that this guarantee is both joint and several.
4. I/We agree that our liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:
 - a) the granting of time, credit or the indulgence or other concession to the Customer;
 - b) any alteration, modification, variation or addition to any agreement in respect of the supply of goods and services; or
 - c) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee or any powers or remedies conferred upon **Enko Group Limited** by this guarantee or by law.
5. I/We confirm that I/we have been advised by Enko Group Limited that I/we should seek legal advice before signing this guarantee.

Name: Signed: Designation:

Witness Name: **Witness Signed:** **Date:**

Name: Signed: Designation:

Witness Name: **Witness Signed:** **Date:**

For SUPPLIER Use Only: Credit Limit \$

Authorised by:

Customer No:

Approved by:

ENKO GROUP LIMITED
TERMS OF TRADE

In these Terms of Trade we have used "we", "us" and "our" to refer to Enko Group Limited and "you" to refer to our customer. By agreeing to acquire goods and any associated services from us you agree to these Terms to the exclusion of your terms (if any).

1. DELIVERY

- 1.1 Unless we agree otherwise, we will arrange delivery of Goods to your nominated premises.
- 1.2 We may charge you storage and transportation expenses if you fail or refuse to take or accept delivery or indicate to us that you will fail to do so.
- 1.3 We reserve the right to Deliver Goods by instalments.
- 1.4 Delivery days are normally Monday-Friday, during normal business hours.
- 1.5 In some rare occasions, delivery may be postponed to ensure a safe delivery of the Goods.
- 1.6 It is your responsibility to ensure adequate site access for delivered Goods. If this has not been done and the carrier is required to return to site at another time, an additional charge may be incurred.
- 1.7 If you request the Goods to be left without being signed for, they are accepting full responsibility of the Goods if they are damaged or missing
- 1.8 You are to ensure that the correct Goods have been delivered. You must report any missing Goods within one working day of receiving the order.
- 1.9 You are to check for any possible damage on the Goods. Any damage must be reported within one working day of receiving the order.
- 1.10 We are responsible for any items damaged or lost between despatch and receipt of Goods if reported by you within one working day of receiving the order.

2. TITLE AND RISK

- 2.1 We shall retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when the Goods are Delivered. You shall insure Goods for their full price, and shall not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.

3. PRICE

- 3.1 All prices are plus GST and other taxes and duties, which shall be paid by you and are in New Zealand dollars.
- 3.2 Our prices are subject to change without notice.
- 3.3 Unless we agree otherwise in writing, the amount you will be charged will be the price as at the date of purchase (website) or placement of order.
- 3.4 If we provide a quotation to you, it is based on information available to us at that time and we may charge you more than the amount quoted if our costs (eg the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change. Unless otherwise agreed in writing, prices are quoted exclusive of GST. If purchasing from the website, the total cost is inclusive of GST and delivery.

4. PAYMENT

- 4.1 You must pay for Goods on their Delivery, unless we decide otherwise.
- 4.2 If you do not have an account, payment must be made before the Goods will be despatched.
- 4.3 We may require you to pay a deposit, being an advanced payment for Goods supplied before those Goods are Delivered.
- 4.4 We are under no obligation to supply Goods to you on credit. If we grant you credit, you agree to pay our invoices by the 20th of the month following the date of the invoice.
- 4.5 You agree to give any further securities as we may from time to time require, in the form required by us, and to comply with all of your obligations under those securities.
- 4.6 We may notify you at any time that we are going to stop supplying Goods to you on credit. This shall be without prejudice to your obligation to pay amounts owing.
- 4.7 All payments shall be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.
- 4.8 In the case of export sales, payment must be made by confirmed irrevocable letter of credit unless we agree otherwise. Letters of credit shall be established through a first class bank and be irrevocable, confirmed and without recourse available for our draft at sight, and otherwise in a form satisfactory to us.
- 4.9 We may apportion payments to outstanding accounts as we see fit.
- 4.10 If you are a company, a guarantee will be required from the directors of that company for payment of Goods.

5. DEFAULT

- 5.1 You will be in Default if:
 - (a) you fail to pay an amount due under these Terms by the due date for payment; or
 - (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
 - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
 - (d) Goods that we have retained title to are at risk; or
 - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 5.2 If you are in Default then we may, at our option, do any one or more of the following:

- (a) charge you default interest at 15% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
- (b) require you to remedy the default in the manner and within the period that we tell you;
- (c) require you to pay to us all amounts you owe us immediately;
- (d) suspend or terminate your account with us;
- (e) enforce security interests created by these Terms;
- (f) exercise any rights that we have under these Terms or that are available to us at law.

5.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

6. MEASUREMENTS

6.1 If measurements are provided by you, and are incorrect, we are not responsible for any associated cost of replacing the incorrect Goods

7. RETURNS

7.1 If you have to return Goods because of our error, we will be liable for all costs associated with returning the Goods.

(a) You will receive a credit for the price of the Goods. No credit is issued until the Goods have been received back by us.

7.2 If you have to return Goods because of your own error, you are liable for all costs associated with returning the Goods. Additionally, we have the right to charge a 20% restocking fee.

8. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

8.1 Clause 2.1 creates a security interest in Goods we supply to you.

8.2 You shall not grant any other security interest or any lien over Goods that we have a security interest in.

8.3 At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.

8.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.

8.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.

8.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.

8.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).

8.8 You shall give us prior written notice of any proposed change of your name or address.

9. WARRANTIES

9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

9.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire goods and services from us for the purposes of a business in terms of sections 2 and 43 of that Act.

9.3 Notwithstanding Clauses 9.1 and 9.2, we give a warranty of the Goods for a period of ten (10) years from receipt of order.

10. LIMITATION OF LIABILITY

10.1 Except as expressly otherwise provided by clauses 1.10, 9.1, 9.2 or 9.3, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by us to you.

10.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods or associated services provided, we may, in our discretion, repair or replace the Goods or re-perform the services, or refund the price of those Goods to you, provided that:

- (a) the Goods must be returned or the claim must be made in writing to us within fourteen (14) days of Delivery; and
- (b) you must supply the date and number of any invoice relating to the Goods; and
- (c) we must be given a reasonable opportunity to inspect the Goods.

11. INTELLECTUAL PROPERTY

11.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of any associated services:

- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you or us);
- (b) any new Intellectual Property will be dealt with in accordance with clause 12.

11.2 If any Goods are to be supplied to your design, you warrant that the manufacture and supply of such Goods by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by us infringes any patent, copyright or other rights of any other person.

12. INTELLECTUAL PROPERTY OWNERSHIP

12.1 Subject to clauses 11.1(a) and 12.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests in the Goods, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.

12.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.

- 12.3 You must not attribute the Goods to anyone other than us or remove any of our trade marks, signatures, logos or similar from the Goods.
- 12.4 Upon payment of all amounts owing to us in accordance with these Terms, we assign to you the copyright in the final form of any Goods which we have specifically created for you for the countries and for the purposes as specified in the description of the work to be performed, or if not specified, for the countries and for the purposes which would be reasonably expected in light of the nature of your request for the Goods.
- 12.5 This clause 12 shall continue in force as between us and you notwithstanding the termination of these Terms or Delivery of the Goods.

13. **PRIVACY OF INFORMATION**

- 13.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
 - (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

14. **NOTICES**

- 14.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to you or where you are a company, to any of your directors.

15. **CONFIDENTIALITY**

- 15.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

16. **COSTS**

- 16.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

17. **CREDIT INFORMATION**

- 17.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

18. **JURISDICTION**

- 18.1 These Terms are governed by the laws of New Zealand. You may take legal action against us only in a New Zealand Court. However we are entitled to commence any action arising out of or in respect of the contract in any other Court.

19. **DISPUTES**

- 19.1 Any claim or dispute arising under these Terms shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

20. **FORCE MAJEURE**

- 20.1 If we have given you a time for Delivery of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.
- 20.2 We shall not be liable for delay or failure to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.

21. **GENERAL**

- 21.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject matter.
- 21.2 You shall not transfer or assign your rights, powers or obligations under these Terms without our prior written consent.
- 21.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capability as trustee of the trust, your liability shall be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.
- 21.4 No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.
- 21.5 We may change these Terms at any time. Any change applies from when it is published on our website www.enkogroup.com or www.enko.nz.

22. **DEFINITIONS**

- 22.1 In these Terms unless the context otherwise requires:
- 22.2 "Delivery" shall mean the receipt of Goods by you. To avoid confusion, this is when the Goods are signed for, or when the courier has left them unattended if requested you. If you indicate to us that you will fail or refuse to take or accept delivery, then the Goods are deemed to have been delivered when we are willing to deliver them.
- "Default" has the meaning set out in clause 5.
- "Goods" shall include any associated services that we supply.
- "Intellectual Property" means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interests.
- "Security" means all existing and future security held by us that secures your obligations under these Terms.
- 22.3 The rule of construction known as the contra proferentem rule does not apply to these Terms.
- 22.4 Words importing the singular include the plural and vice versa.
- 22.5 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.

22.6 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

22.7 References to a statute include references to:

- (a) regulations, orders, rules or notices made pursuant to that statute;
- (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- (c) any statute passed in substitution of that statute.