



CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: _____ REF No. _____

CLIENT'S TRADE NAME: _____

CLIENT'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ Postcode: _____ _____ Postcode: _____

COMMERCIAL CLIENTS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ Postcode: _____ _____ Postcode: _____

ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 2: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 3: _____ Address or A/C No: _____

Phone: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Kiwi Fertiliser Company Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (CLIENT): _____ SIGNED (KIWI): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

Kiwi Fertiliser Company Ltd – Terms & Conditions of Trade

<p>2. Definitions</p> <p>2.1 "Kiwi" means Kiwi Fertiliser Company Ltd, its successors and assigns or any person acting on behalf of and with the authority of Kiwi Fertiliser Company Ltd.</p> <p>2.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client it is a reference to each Client jointly and severally.</p> <p>2.3 "Goods" means all Goods or Services supplied by Kiwi to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>2.4 "Price" means the Price payable for the Goods as agreed between Kiwi and the Client in accordance with clause 6 below.</p> <p>3. Acceptance</p> <p>3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>3.2 These terms and conditions may only be amended with Kiwi's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Kiwi.</p> <p>3.3 The Client acknowledges and accepts that Kiwi at their discretion, reserves the right not to supply Goods if, for any reason (including but not limited to, where the Goods are not or cease to be available, account disputes or conditions placed on Kiwi by their Kiwis), Kiwi shall not be liable to the Client for any loss or damage the Client suffers due to Kiwi exercising its rights under this clause.</p> <p>4. Authorised Representatives</p> <p>4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Kiwi as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Kiwi in writing that said person is no longer the Client's duly authorised representative).</p> <p>4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Kiwi in writing of the parameters of the limited authority granted to their representative.</p> <p>4.3 The Client specifically acknowledges and accepts that they will be solely liable to Kiwi for all additional costs incurred by Kiwi (including Kiwi's profit margin) in providing any Goods, Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).</p> <p>5. Change in Control</p> <p>5.1 The Client shall give Kiwi not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Kiwi as a result of the Client's failure to comply with this clause.</p> <p>6. Price and Payment</p> <p>6.1 At Kiwi's sole discretion the Price shall be either:</p> <ul style="list-style-type: none">(a) as indicated on any invoice provided by Kiwi to the Client; or(b) the Price as at the date of delivery of the Goods according to Kiwi's current price list; or(c) Kiwi's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. <p>6.2 Kiwi reserves the right to change the Price if a variation to Kiwi's quotation is requested.</p> <p>6.3 At Kiwi's sole discretion a non-refundable deposit may be required.</p> <p>6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Kiwi, which may be:</p> <ul style="list-style-type: none">(a) on delivery of the Goods;(b) before delivery of the Goods;(c) by way of instalments/progress payments in accordance with Kiwi's payment schedule;(d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;(e) the date specified on any invoice or other form as being the date for payment; or(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Kiwi. <p>6.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and Kiwi.</p> <p>6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Kiwi an amount equal to any GST Kiwi must pay for any supply by Kiwi under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>7. Delivery of Goods</p> <p>7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that Kiwi (or Kiwi's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>7.2 At Kiwi's sole discretion the cost of delivery is in addition to the Price.</p> <p>7.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Kiwi shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>7.4 Kiwi may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>7.5 Any time or date given by Kiwi to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Kiwi will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>8. Risk</p> <p>8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Kiwi is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Kiwi is sufficient evidence of Kiwi's rights to receive the insurance proceeds without the need for any person dealing with Kiwi to make further enquiries.</p>	<p>8.3 If the Client requests Kiwi to leave Goods outside Kiwi's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's own risk.</p> <p>8.4 Any advice, recommendation, information, assistance or service provided by Kiwi in relation to Goods or Services supplied is given in good faith, is based on Kiwi's own knowledge and experience and shall be accepted without liability on the part of Kiwi and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services. Furthermore, any information provided to the Client regarding soil nutrition is supplied by a third party laboratory. Kiwi accepts no responsibility for the accuracy of the data provided.</p> <p>8.6 The Client acknowledges that Kiwi accepts no responsibility for Goods supplied to the Client in the event that the Client orders incorrect Goods. Returns will not be accepted.</p> <p>8.7 Any damage to delivered Goods which is due to stock, animals, etc is the responsibility of the Client. Kiwi shall not be liable for any such damage.</p> <p>9. Title</p> <p>9.1 Kiwi and the Client agree that ownership of the Goods shall not pass until:</p> <ul style="list-style-type: none">(a) the Client has paid Kiwi all amounts owing to Kiwi; and(b) the Client has met all of its other obligations to Kiwi. <p>9.2 Receipt by Kiwi of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>9.3 It is further agreed that:</p> <ul style="list-style-type: none">(a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Kiwi on request.(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Kiwi and must pay to Kiwi the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Kiwi and must pay or deliver the proceeds to Kiwi on demand.(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Kiwi and must sell, dispose of or return the resulting product to Kiwi as so directs.(e) the Client irrevocably authorises Kiwi to enter any premises where Kiwi believes the Goods are kept and recover possession of the Goods.(f) Kiwi may recover possession of any Goods in transit whether or not delivery has occurred.(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Kiwi.(h) Kiwi may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client. <p>10. Personal Property Securities Act 1999 ("PPSA")</p> <p>10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <ul style="list-style-type: none">(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and(b) a security interest is taken in all Goods previously supplied by Kiwi to the Client (if any) and all Goods that will be supplied in the future by Kiwi to the Client. <p>10.2 The Client undertakes to:</p> <ul style="list-style-type: none">(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Kiwi may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;(b) indemnify, and upon demand reimburse, Kiwi for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;(c) not register a financing change statement or a change demand without the prior written consent of Kiwi; and(d) immediately advise Kiwi of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. <p>10.3 Kiwi and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>10.5 Unless otherwise agreed to in writing by Kiwi, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>10.6 The Client shall unconditionally ratify any actions taken by Kiwi under clauses 10.1 to 10.5.</p> <p>11. Security and Charge</p> <p>11.1 In consideration of Kiwi agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>11.2 The Client indemnifies Kiwi from and against all Kiwi's costs and disbursements including legal costs and a solicitor and own client basis incurred in exercising Kiwi's rights under this clause.</p> <p>11.3 The Client irrevocably appoints Kiwi and each director of Kiwi as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.</p> <p>12. Client's Disclaimer</p> <p>12.1 The Client hereby disclaims any right to rescind, or cancel any contract with Kiwi or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Kiwi and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.</p> <p>13. Defects</p> <p>13.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Kiwi of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Kiwi an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Kiwi has agreed in writing that the Client is entitled to reject, Kiwi's</p>	<p>liability is limited to either (at Kiwi's discretion) replacing the Goods or repairing the Goods.</p> <p>Goods will not be accepted for return other than in accordance with 13.1 above.</p> <p>14. Warranty</p> <p>14.1 For Goods not manufactured by Kiwi, the warranty shall be the current warranty provided by the manufacturer of the Goods. Kiwi shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>14.2 To the extent permitted by statute, no warranty is given by Kiwi as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Kiwi shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>15. Consumer Guarantees Act 1993</p> <p>15.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Kiwi to the Client.</p> <p>16. Default and Consequences of Default</p> <p>16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Kiwi's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>16.2 If the Client owes Kiwi any money the Client shall indemnify Kiwi from and against all costs and disbursements incurred by Kiwi in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Kiwi's collection agency costs, and bank dishonour fees).</p> <p>16.3 Without prejudice to any other remedies Kiwi may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Kiwi may suspend or terminate the supply of Goods to the Client. Kiwi will not be liable to the Client for any loss or damage the Client suffers because Kiwi has exercised its rights under this clause.</p> <p>16.4 Without prejudice to Kiwi's other remedies at law Kiwi shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Kiwi shall, whether or not due for payment, become immediately payable if:</p> <ul style="list-style-type: none">(a) any money payable to Kiwi becomes overdue, or in Kiwi's opinion the Client will be unable to make a payment when it falls due;(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. <p>17. Cancellation</p> <p>17.1 Kiwi may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Kiwi shall repay to the Client any money paid by the Client for the Goods. Kiwi shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Kiwi as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>17.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>18. Privacy Act 1993</p> <p>18.1 The Client authorises Kiwi or Kiwi's agent to:</p> <ul style="list-style-type: none">(a) access, collect, retain and use any information about the Client:<ul style="list-style-type: none">(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or(ii) for the purpose of marketing products and services to the Client.(b) disclose information about the Client, whether collected by Kiwi from the Client directly or obtained by Kiwi from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client. <p>18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>18.3 The Client shall have the right to request Kiwi for a copy of the information about the Client retained by Kiwi and the right to request Kiwi to correct any incorrect information about the Client held by Kiwi.</p> <p>19. General</p> <p>19.1 The failure by Kiwi to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Kiwi's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Courts of New Zealand.</p> <p>19.3 Kiwi shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Kiwi of these terms and conditions (alternatively Kiwi's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Kiwi nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>19.5 Kiwi may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>19.6 The Client agrees that Kiwi may amend these terms and conditions at any time. If Kiwi makes a change to these terms and conditions, then that change will take effect from the date on which Kiwi notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Kiwi to provide Goods to the Client.</p> <p>19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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