



Free Phone 0800 80 66 55  
Free Fax 0800 80 66 33  
Email [info@mowac.com](mailto:info@mowac.com)

**ACCOUNT APPLICATION FORM**

\* Business Name: \_\_\_\_\_  
(delete those not applicable)Ltd Co./Sole Trader/Partnership/Trust/Other – please specify

\* Company Incorporation Number: \_\_\_\_\_ Paid Up Capital: \_\_\_\_\_ Length of time in business: \_\_\_\_\_

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

\* Street Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\* Post Code for Street Address: \_\_\_\_\_

\* Postal Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\* Post Code for Postal Address: \_\_\_\_\_

\* Business Phone: \_\_\_\_\_ \* Fax: \_\_\_\_\_ \* Email: \_\_\_\_\_

Registered Office Address (If a Company): \_\_\_\_\_

Full Name, Address, and Phone Numbers of Directors/Partners/Sole Trader/Trustees:

\_\_\_\_\_

\_\_\_\_\_

\* Person Responsible for Accounts: \_\_\_\_\_

\* Person Responsible for Ordering: \_\_\_\_\_

\* Business References: (From non-associated entities)

1. \_\_\_\_\_ Phone: \_\_\_\_\_

2. \_\_\_\_\_ Phone: \_\_\_\_\_

3. \_\_\_\_\_ Phone: \_\_\_\_\_

**ACCEPTANCE OF TRADING TERMS**

**TO: Mowac Corporation Ltd:**

In consideration of supplying goods in accordance with your Terms and Conditions of Trade 1 June 2006 I/We hereby acknowledge:

1. Receipt of a copy of Mowac Corporation Ltd's Terms and Conditions of Trade 1 June 2006 and a copy of this Acceptance of Trading Terms Agreement.
2. In all dealings with Mowac Corporation Ltd, I/we agree to be bound by the Company's Terms and Conditions of Trade 1 June 2006.  
**Please note Clause 7.1 "Purchases made during a month must be paid in full by the 20<sup>th</sup> of the month following invoice date".**
3. That the information contained on Mowac Corporation's Account Application Form (see above) is correct.

\* Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200

\* Applicant/Buyer: \_\_\_\_\_ \* Witness: \_\_\_\_\_

\* Signature: \_\_\_\_\_ \* Signature: \_\_\_\_\_

\* Position: \_\_\_\_\_ Occupation: \_\_\_\_\_

Address: \_\_\_\_\_



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## **TERMS AND CONDITIONS OF TRADE 1 JUNE 2006**

### **Clause 1 Acceptance of Order:**

All goods are sold on the following terms and conditions and no person in the employment of Mowac Corporation Ltd ("Mowac") has the authority, except under the signature of the General Manager of MOWAC, to accept orders or supply goods on any conditions, nor to vary these conditions in any way whatsoever, notwithstanding any terms or conditions which may have been included in the Buyer's written purchase order or request for supply proposal, if any.

### **Clause 2 Pricing, Quotations and Ordering:**

- 2.1 Prices are quoted EXSTORE Auckland, New Zealand and are subject to change without notice. Please check all Packing Notes for current pricing.
- 2.2 If stock is not available for immediate supply the items will be placed on back order and immediately supplied as they become available. The Buyer must advise in writing if it does not wish any items to be placed on back order
- 2.3 No cancellation or variation of any order or part thereof shall be binding on MOWAC unless accepted in writing. All costs incurred up to and including the date of cancellation or variation will be to Buyer's account.
- 2.4 The Buyer may not return goods, which the buyer has ordered, without the prior written authorisation of MOWAC. For any returned goods, which MOWAC has so authorised, the buyer shall be liable to pay all the actual transportation costs. In addition, the Buyer may be liable to pay MOWAC a handling and administration charge to dispose of the returned goods. However, if the goods have been incorrectly supplied by MOWAC, which is accepted by MOWAC, the cost of the goods without handling fee and the return freight will be credited to the Buyer's account by MOWAC.

### **Clause 3. Force Majeure:**

The following circumstances shall relieve MOWAC for delays, non-completion or delivery of order - industrial disputes, fire damage to factory premises, war, floods and other such natural calamities, Government restrictions, blockade, civil commotion and non-availability of suitable shipping services and facilities, or any other causes beyond MOWAC's control where MOWAC has exercised reasonable care and due diligence to avoid such occurrence.

### **Clause 4. Suitability of Purpose and Limitation of Liability:**

- 4.1 The Buyer acknowledges that it has satisfied itself that the goods are suitable for its purpose and that no representation as to suitability has been made by MOWAC.
- 4.2 Notwithstanding any other provisions hereof, MOWAC shall not be liable to the Buyer or anyone claiming through the Buyer for.
  - 4.2.1 any special, indirect, incidental or consequential damages of any kind whatsoever, whether such damages arise out of the use, inability to use, failure of, defects in, the condition of, delay in delivery of, or non delivery of goods or otherwise, and/or
  - 4.2.2 for any charges or expenses of any nature incurred without MOWAC's written consent.
- 4.3 In no event shall MOWAC's liability under any claim made by the Buyer or anyone claiming through the Buyer be greater than the purchase price of the goods or part thereof or the amount of insurance proceeds received by MOWAC in respect of which damages are claimed.
- 4.4 Subject to the provisions of this Clause 2, 4 and 5 herein, all conditions and warranties whether expressed or implied, and whether arising at common law or by statute are hereby expressly excluded.

### **Clause 5. The Consumer Guarantees Act 1993**

- 5.1 If the Buyer is not buying products from MOWAC for consumption by the Buyer, the Buyer agrees and acknowledges that it is not deemed to be a "consumer" as defined in the Consumer Guarantees Act 1993 and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between the Buyer and MOWAC.
- 5.2 The Buyer (whether or not it is a Consumer of goods and services supplied by MOWAC) agrees and acknowledges that all supplies of goods and services from MOWAC are/will be acquired for the Buyer's business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between the Buyer and MOWAC.

### **Clause 6. Replacement of Defective Goods:**

- 6.1 If MOWAC is given written notice of any defects within five (5) working days after the Buyer has received the goods, MOWAC shall replace or repair any defective goods or give the Buyer a credit for the purchase price of such goods at the sole discretion of MOWAC. The Buyer must obtain from MOWAC approval and authorisation before any goods are returned to MOWAC.
- 6.2 The Buyer's remedies and MOWAC's obligations in connection with any claims relating to alleged defects or non-conformities in any product shall be limited to replacement of goods or any portion thereof which is defective in material or workmanship or otherwise non-conforming with the Buyer's order, or payment by MOWAC of the purchase price of such defective goods, whichever is the less.
- 6.3 MOWAC shall be responsible for any freight costs associated with the shipment of any defective goods to and from MOWAC or the disposal of any defective goods, if the claim is accepted by MOWAC after inspection the cost of return freight will be credited to the Buyer's account.
- 6.4 MOWAC shall not be responsible for, and shall not be obliged to pay or reimburse the Buyer for any loss or damage arising from abuse or improper use of or alternation to the goods.

#### **Clause 7. Terms of Payment:**

- 7.1 The following are the normal terms of payment:  
Purchases made during a month must be paid in full by the 20<sup>th</sup> of the month following invoice date
- 7.2 Where settlement of an account is not made on due date, MOWAC reserves the right to suspend accounts that exceed their approved credit account terms.
- 7.3 Where settlement of an account is not made on due date, MOWAC reserves the right to charge interest at 2% per month. Such interest will accrue to the Buyer's account on any part of the price remaining unpaid on a daily basis from the due date down to the date of actual payment. Any other costs incurred by MOWAC in the recovery of an outstanding amount including all legal fees, debt collection charges, fax and phone charges, travel expenses will be paid by the Buyer.
- 7.4 MOWAC reserves the right to deliver the goods by instalments and each instalment will comprise a separate contract. Payment for each instalment shall be in accordance with Clause 10 herein and failure to pay on due date shall entitle MOWAC to suspend deliveries of other instalments without prejudice to any other remedies available to MOWAC.

#### **Clause 8. Preservation of Title in Goods Sold:**

- 8.1 Ownership of the goods shall not pass to the Buyer until the Buyer has paid MOWAC the invoice price for the goods.
- 8.2 The Buyer acknowledges that it is in possession of the goods as an agent and bailee of MOWAC and that it owes a fiduciary duty to MOWAC until such time as legal and equitable title shall transfer pursuant hereto.
- 8.3 The Buyer acknowledges that until the goods are paid for in full, without deduction or set off, MOWAC has a Purchase Money Security interest (as that term is defined in the New Zealand Personal Property Securities Act 1999) in the goods.
- 8.4 By placing an order with MOWAC, the Buyer represents that it is not insolvent and has not committed an act of bankruptcy nor any act, which would entitle any Debenture Holder to appoint a Receiver.
- 8.5 Until such time as the Buyer becomes owner of the goods it will if required by MOWAC store the goods on its premises separately from the Buyer's own goods and those of any other person and in a manner which makes them readily identifiable as the goods of MOWAC.
- 8.6 The Buyer's rights to possession of the goods shall cease if:
- 8.6.1 Not being a company, it commits an available act of bankruptcy or if 8.6.2  
being a company it does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding-up, or if 8.6.3  
Buyer is overdue in making payment of any sum due to MOWAC and MOWAC makes demand. Demand may be verbally by any employee of MOWAC to any employee of the Buyer at the time of re-possession or may be made in writing at any time prior to re-possession.
- 8.7 MOWAC may for the purposes of recovery of its goods enter upon the premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 8.8 Any stock held by the Buyer which meets the description of stock on an invoice in respect of which title to goods has not transferred from MOWAC shall in the absence of separate storage of goods in terms hereof and in the absence of evidence to the contrary be deemed to be stock to which MOWAC has retained title and MOWAC shall be entitled to exercise any of its remedies hereunder against such stock.
- 8.9 If MOWAC shall repossess any of its goods the buyer shall pay to MOWAC the actual costs incurred by MOWAC in the course of repossession.
- 8.10 Subject to the terms hereof the Buyer is licensed by MOWAC to sell the goods subject to the express condition that until the goods are paid for such agreement to sell shall take place as Agent (save that the Buyer shall not hold himself out as such) and Bailee for MOWAC, whether the buyer purports to sell on its own account or not. The entire proceeds of sale are to be held in trust for MOWAC and the Buyer owes a fiduciary duty to MOWAC in respect of such moneys. They are not to be mingled with other moneys or paid into any overdrawn Bank Account and shall be at all times identifiable as MOWAC's money. This obligation and fiduciary duty shall cease when the Buyer has paid MOWAC the agreed price for the goods.
- 8.11 The Buyer's right to sell stock shall terminate forthwith on notice of such termination in terms of clause 8.6 hereof.
- 8.12 If the Buyer has not received the proceeds of such sale it will if called upon so to do by MOWAC with seven (7) days thereof assign to MOWAC any rights against the person or persons to whom he has supplied any goods or product or chattel made from or with MOWAC's goods.
- 8.13 Until payment is made to MOWAC, the Buyer will not mix the goods with other goods.

#### **Clause 9. The Privacy Act 1993**

- 9.1 The Buyer acknowledges that:
- 9.1.1 Personal information collected or held by MOWAC (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes
- 9.1.1.1 administering, whether directly or indirectly, MOWAC's contracts and enforcing its rights thereunder,
- 9.1.1.2 marketing goods and services provided by MOWAC
- 9.1.1.3 ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements. 9.1.1.4
- enabling MOWAC to notify any credit agency of any application for credit or default on any obligation of the Buyer to MOWAC and enabling MOWAC to provide such personal information to any credit agency so such agency can maintain effective accounting records 9.1.1.5
- Buyer to communicate with MOWAC for any purpose.
- 9.2 The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by MOWAC.
- 9.3 The Buyer authorises MOWAC to obtain at any time from any person or entity, any information MOWAC may require to process and/or accept any application for credit the Buyer may make to it or to perform or complete any of the other purposes for which the Buyer has provided personal information to MOWAC. The Buyer authorises any such person to release to MOWAC any personal information those persons hold concerning the Buyer.

9.4 For the purposes of the preceding clauses, the terms "MOWAC" includes any financier, insurer or discounter of MOWAC's contract or any related company thereof. The term "related company" has the meaning given to it by the Companies Act 1993 or replacement legislation.

9.5 If the Buyer fails to provide any information requested by MOWAC in respect of any application for credit the Buyer may make, MOWAC may be unable to process such application.

**Clause 10. Personal Property Securities Act 1999**

10.1 The Buyer shall notify MOWAC immediately should the buyer change address. In the absence of notification that the Buyer has changed address, the Buyer acknowledges and agrees that the address held by MOWAC is the Buyer's current address for the purposes of the Personal Property Securities Act 1999 (hereinafter referred to in this clause as "the Act").

10.2 Pursuant to section 107 of the Act, the parties hereby contract out of the following provisions:

10.2.1 Sections 114(1) (a) and 117(1) (c),

10.2.2

The Parties agree that the buyer does not have the right to

- (I) Receive a statement of account under section 116
- (II) Recover surplus under section 119
- (III) Receive notice of any proposal by MOWAC to retain collateral under section 120(2)
- (IV) Object should MOWAC propose to retain collateral under section 121
- (V) Not be reimbursed for damage caused if MOWAC removes an accession under section 126
- (VI) Refuse permission to remove an accession under section 127
- (VII) Receive notice of the removal of an accession under section 129

**Clause 11 Entire Agreement:**

11.1 These standard Terms and Conditions embody the whole agreement of the parties and supersede any and all oral or written specification, communication and agreements by or on behalf of any party.

11.2 Any amendments or modifications of the Terms must be in writing and signed by the Buyer and the General Manager of MOWAC to be binding.

**Clause 12. The Sellers Remedies always Enforceable:**

Failure by MOWAC to enforce any terms and conditions herein or to exercise in whole or in part any right MOWAC may have, shall not be deemed to be a waiver thereof and shall not be nor be deemed to be a waiver of any subsequent breach of any term or condition or right.

**Clause 13. Governing Law:**

These Terms and Conditions shall be governed by and interpreted in accordance with the laws of New Zealand.

**Clause 14. Headings:**

Clause headings are inserted for convenience only and shall be ignored in interpreting the terms of this Agreement.

**PERSONAL GUARANTEE**

In consideration of Mowac Corporation agreeing to provide an "Open" credit account to \_\_\_\_\_ ("the customer") I \_\_\_\_\_ personally guarantee all debts incurred by the customer, in respect of goods supplied by Mowac Corporation Ltd and acknowledge that you shall be at liberty without discharging me from liability hereunder to grant time or other indulgences to the debtor and to treat me in all respects as though I was jointly liable with the debtor to you instead of being merely its guarantor. Notwithstanding any legal limitation, disability, incapacity to defect on the part of the applicant or its winding up, liquidation, dissolution, death or bankruptcy or other lack of responsibility for the debt.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200

Guarantor: \_\_\_\_\_ Witness: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Position: \_\_\_\_\_ Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

For Office Use only:

Customer Number \_\_\_\_\_ Credit Limit NZD \_\_\_\_\_

Payment Terms - Spare Parts \_\_\_\_\_ Equipment \_\_\_\_\_

Customer Class \_\_\_\_\_ Territory \_\_\_\_\_ Sales Person \_\_\_\_\_

A/C's Mgr Approval \_\_\_\_\_ GM Approval \_\_\_\_\_