



# Credit Account Application

Agreement between Dahuti International Ltd (the Supplier)

and \_\_\_\_\_ (the Purchaser)

## PURCHASER INFORMATION

Registered Name:

Company Registration Number:  Date Established:

Trading Name:

Postal Address:

Contact Name:  Mobile:

Email Address:

Phone:  Fax:

## ACCOUNTS DEPARTMENT

Accounts Contact:  Phone:

Email Address:

Please indicate if you would prefer to receive Statements and Invoices by post or by email: Post  Email   
(Note: All statements and invoices will be automatically sent to the nominated e-mail address above)

## DELIVERY INSTRUCTIONS

Delivery Address:

Delivery Contact:  Phone:

## DETAILS OF OWNER (if Sole Trader), PARTNERS (if Partnership), DIRECTORS (if Company) or TRUSTEES (if Trust)

Full Name:  Address:

Phone:

Full Name:  Address:

Phone:

## TRADE REFERENCES

Company Name:  Phone:

Company Name:  Phone:

Company Name:  Phone:

## ACCEPTANCE OF TERMS & CONDITIONS OF TRADE

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 fully understand Dahuti International Ltd's Terms and Conditions of Trade (**see over**) 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.

Name of the person signing the application:

Position held:

Signature: (Authorised Signatory Only)  Date:

Please complete and return to:



## Terms & Conditions of Trade

1. **Terms of Trade**
    - 1.1 The terms and conditions set out below apply to every supply of Goods and Services made by the Supplier to the Purchaser. By placing an Order with the Supplier, the Purchaser agrees that it is bound by these Terms & Conditions of Trade and that the Purchaser's own terms and conditions do not apply.
    - 1.2 Where the Purchaser has entered into a separate written Supply Agreement with The Supplier, these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate Supply Agreement, in which case the relevant provisions of the Supply Agreement shall prevail.
  2. **Payment & Invoices**
    - 2.1 **Payment:** Unless otherwise agreed in writing, payment in full on the 20<sup>th</sup> day of the month following the month of which the invoice was dated. If any item or part of any item in an invoice is disputed, the Purchaser shall notify the Supplier prior to the 10<sup>th</sup> day of the month following invoice, specifying the item disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.
    - 2.2 **GST:** Unless otherwise agreed in writing, GST payable in connection with any supply under the Supply Agreement is payable by the Purchaser in addition to the prices and amounts set out in the Supply Agreement.
    - 2.3 **Method of Payment:** Payments shall be paid to the bank account specified by the Supplier.
    - 2.4 **Payments to be free and clear:** Amounts payable by the Purchaser under the Supply Agreement or these terms shall be free and clear of any restriction or condition, deduction or withholding on account of any tax (except to the extent required by law), or deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.
    - 2.5 **Collection Costs:** If the Supplier incurs any costs or expenses in respect of collection of any amount due but unpaid under the Supply Agreement or these terms, the Purchaser agrees to pay to the Supplier all such costs incurred.
    - 2.6 **Default interest payable:** If the Purchaser fails to pay any amount payable by it under the Supply Agreement or these terms on its due date, default interest shall accrue on the overdue amount from the due date to, and including, the date of payment but without prejudice to the Supplier's rights or remedies in respect of the Purchaser's default in failing to make payment on the due date. The default interest rate shall be 15% per annum and shall be immediately payable by the Purchaser on demand by the Supplier.
  3. **Delivery & Risk**
    - 3.1 **Delivery terms:** Delivery of the Goods shall be to the Delivery Location and on the terms set out in the Supply Agreement. If the Purchaser has instructed the Supplier to deliver an installment and fails or refuses to take or accept delivery, or indicates to the Supplier that the Purchaser will fail or refuse to take or accept delivery, the Goods will be deemed to have been delivered when the Supplier is willing to deliver them.
    - 3.2 **Freight:** The Supplier may employ any reasonable means of freight and/or delivery.
    - 3.3 **Passing of Risk:** Risk in respect of the Goods shall pass to the Purchaser on deposit of the Goods by the Supplier at the Delivery Location specified in the Supply Agreement.
    - 3.4 **Freight costs additional:** In addition to all other payments, the Purchaser shall pay for all reasonable freight costs incurred by the Supplier in relation to the freight of the Goods from Origin to the Delivery Location.
  4. **Non-Conformity of Goods**
    - 4.1 **No representation:** To the extent that it is permitted by law, all liability of the Supplier in respect of the Goods arising from any duties, warranties, guarantees, or conditions implied by statute or otherwise is excluded and the Supplier makes no representations nor gives any warranties whether express or implied in relation to the Goods.
    - 4.2 **Buyer inspection and acceptance:** The Purchaser shall examine each installment as soon as possible (and in any case within 1 day) after each installment arrives at the Delivery Location (Date of Inspection). If the Purchaser considers that the Goods do not conform to the Supply Agreement the Purchaser must advise the Supplier within 1 day of the Date of Inspection (Final Inspection Date). The Purchaser agrees that any failure to inspect the Goods or report any non-conformity to the Supplier by the Final Inspection Date will constitute acceptance by the Purchaser of the Goods.
    - 4.3 **Installments:** Failure by the Supplier to deliver, or defective delivery by the Supplier of one or more installments shall not entitle the Purchaser to cancel or repudiate the Supply Agreement.
    - 4.4 **Consumer Guarantees Act 1993 (CGA):** The Purchaser undertakes that it acquires the Goods for the purposes of a business and accordingly, to the extent permitted by law, the guarantees contained in the CGA are excluded.
    - 4.5 **Excluded material:** Any information relating to the Goods and their use, such as weights, dimensions, prices and colours contained in catalogues, circulars, advertisements, illustrations or price lists of the Supplier shall not take effect as terms of the Supply Agreement unless expressly referred to in the Supply Agreement.
  5. **Force Majeure**
    - 5.1 The Supplier shall not be responsible to the Purchaser for any loss to the Purchaser resulting from delay in delivery of the Goods (or any part thereof) occasioned by an act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/or shipping strike), lock-out, combination of workers, or civil commotion which is not due to the Supplier's own acts or negligence (Force Majeure Event). If the grounds or relief under the clause continue for more than 10 days, or if and as soon as performance becomes impossible, the Supplier shall be entitled to terminate the Supply Agreement by written notice to the Purchaser.
  6. **Security & Title**
    - 6.1 **PPSA:** The terms in this clause have the meanings given to those terms under, or in the context of, the Personal Properties Securities Act 1999 (PPSA).
    - 6.2 **PPSA Terms:** Terms defined in the PPSA and used in this clause 6 have the meanings given to those terms in the PPSA.
    - 6.3 **Retention of Title:** Legal and beneficial ownership of the Goods remains with the Supplier until payment of all amounts owing by the Purchaser to the Supplier under the Supply Agreement are made in full.
    - 6.4 **Buyer to keep goods separate:** Until legal and beneficial ownership of Goods has passed to the Purchaser, the Purchaser will store Goods separately from other goods and ensure Goods remain identifiable and ascertainable from any other goods.
    - 6.5 **Suppliers Remedies:** Without prejudice to any of the Supplier's other remedies (and whether or not the Supplier has exercised any other right), if an Enforcement Event Occurs then at any time that Enforcement Event Occurs:
      - a) by written notice to the Purchaser, the Supplier may cancel any outstanding contract or order with the Purchaser including, for the avoidance of doubt, the Supply Agreement or any installment;
      - b) any moneys payable by the Purchaser to the Supplier whether due for payment or not shall become immediately due and payable;
      - c) the Supplier reserves the right, and the Purchaser hereby irrevocably provides consent to the Supplier, to enter (whether forcibly or otherwise), by its employees or authorised agents, onto the Purchaser's premises, or onto any premises where Goods owned by the Supplier are reasonably thought to be stored and repossess and subsequently resell such Goods; and
      - d) The Supplier may appoint any persons to be a receiver of all or any of the Goods in addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.
    - 6.6 **Security Interest in Goods:** The Purchaser grants a security interest to the Supplier in the Goods as security for payment of each Installment Price, for any other amounts owing by the Purchaser to the Supplier, and for the performance by the Purchaser of all the Purchaser's other obligations to the Supplier from time to time (**Buyers indebtedness and obligations**).
  - 6.7 **Security Interest in Property:** For the purposes of section 36 of the PPSA the Purchaser grants to the Supplier, as security for the Purchaser's indebtedness and obligations a security interest in all of the Purchaser's present and after-acquired property, except for property in or to which the Purchaser has rights and which have not been supplied by the Supplier to the Purchaser (other than property which is proceeds of any of that present and after-acquired property which has been supplied by the Supplier to the Purchaser).
  - 6.8 **Security Interest to Subsist:** The Purchaser agrees to do anything that the Supplier reasonably requires to ensure that the Supplier has a perfected security interest in the Goods and a purchase money security interest in the Goods to the extent of their purchase price.
  - 6.9 **Seller may preserve purchase money security interest:** The Supplier may, at any time, and at its discretion, allocate any payment received from the Buyer towards any sum owed by the Purchaser to the Supplier, including in such manner as preserves the maximum value of any purchase money security interest the Supplier may have in the Goods. The Supplier may do so at the time of receipt of that payment or at any time thereafter.
  - 6.10 **Change of details:** The Purchaser agrees to give the Supplier not less than 14 days prior written notice of any change in the Purchaser's name and/or any other changes in the Purchaser's details (including, but not limited to, change in the Purchaser's address (including the Delivery Location), phone or facsimile number, trading name or business practice).
  - 6.11 **Waivers:** The Purchaser agrees that nothing in Sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Supply Agreement or these terms, or the security created under the Supply Agreement or these terms, and waives the Purchaser's rights under sections 121, 125, 129 and 131 of the PPSA. The Purchaser waives the right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Supply Agreement and these terms.
7. **Limitation of liability**
    - 7.1 The liability of the Supplier in respect of all claims for loss, damage or injury arising from a breach of any of the Supplier's obligations under these Terms or from any act or omission of the Supplier is limited, in each case, to the lesser of:
      - a) replacement or repair of the affected Goods;
      - b) payment of the actual cost of replacing or repairing the affected Goods; or
      - c) the price of the affected Goods or Services
    - 7.2 The Supplier shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by the Supplier, except as set out in clause 7.1.
    - 7.3 No action arising out of the supply of Goods or Services by the Supplier, regardless of form, may be brought more than six months after the Purchaser becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.
  8. **Termination**
    - 8.1 All outstanding monies shall become immediately due and payable from the Purchaser, and the Supplier reserves the right to immediately cancel any Order, Supply Agreement and/or the Purchaser's right to hold a Credit Account, if the Purchaser:
      - a) ceases or threatens to cease carrying on business;
      - b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
      - c) has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
      - d) breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.
  9. **Privacy Act 1993**
    - 9.1 The Purchaser authorises the Supplier to collect, retain and use personal information about the Purchaser for the following purposes:
      - a) assessing the Purchaser's creditworthiness;
      - b) administering the Purchaser's Orders and Supply Agreements;
      - c) receiving information from one or more credit reference agencies, concerning the credit history of the Purchaser;
      - d) disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Purchaser's credit worthiness.
    - 9.2 For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the trading relationship.
    - 9.3 The Purchaser, if an individual, has a right of access to personal information about the Purchaser held by the Supplier and may request correction of the information.
  10. **Disputes**
    - 10.1 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute.
    - 10.2 If the senior management fail to resolve the Dispute within twenty (20) working days of notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.
  11. **Miscellaneous/Definitions**
    - 11.1 **Entire Agreement:** The Supply Agreement and these terms (including any schedule thereto) are the entire agreement between the parties and replace all representations, agreements and other communications made by the Supplier and the Purchaser.
    - 11.2 **Governing law:** The Supply Agreement and these terms shall be governed by, and constituted in accordance with, the laws of New Zealand, and the parties hereby submit to the jurisdiction of the courts of New Zealand.
    - 11.3 **Definitions:**

**Purchaser** means the person who purchases Goods or Services from the Supplier, and includes the Purchaser's employees, contractors, subcontractors or agents and has the meaning given to that term in the Supply Agreement.

**Supplier** means Dahuti International Ltd.

**Goods** means any good provided by the Supplier.

**Services** means any services performed by the Supplier.

**Enforcement Event** means any amount payable by the Purchaser to the Supplier is not paid when due (including by reason of a Force Majeure Event) or the Purchaser becomes insolvent, commits an act of bankruptcy, has a receiver appointed over all or any part of the assets of the Purchaser, made or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management.

**GST** means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.

**Installment Price** means, in respect of an installment, the price of that installment, in each case calculated by reference to the relevant volumes and the per metric tonne price set out in the Supply Agreement.

**Order** means an agreement between the Supplier and the Purchaser for the Supplier to supply goods and/or services to the Purchaser.

**Origin** means the store or factory from where the product is loaded from for transport to the Delivery Location.
    - 11.4 **Supply Agreement definitions:** Unless otherwise defined in these terms or if the context otherwise requires, terms defined in the Supply Agreement shall have the same meaning or construction in these terms.