



33 Ha Crescent, Wiri, Auckland 2104  
 P.O Box 97948, Manukau City, Auckland 2241  
 Telephone 09 25000 90, Facsimile 09 25000 92  
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 Email: [accounts@raj.co.nz](mailto:accounts@raj.co.nz) Web: [www.raj.co.nz](http://www.raj.co.nz)

**APPLICATION FOR CREDIT/ACCOUNT – PLEASE PRINT CLEARLY**

TRADING NAME: .....  
 POSTAL ADDRESS: ..... POST CODE:.....  
 DELIVERY ADDRESS: .....  
 TELEPHONE: ..... FAX: ..... EMAIL: .....  
 I WISH TO RECEIVE EMAIL COPIES OF INVOICES & STATEMENTS .....YES / NO

I WANT TO RECEIVE SPECIALS, INDUSTRY ADVICES AND TIPS THROUGH YOUR E-NEWSLETTER! SIGN ME UP!	YES / NO	EMAIL ADDRESS: .....
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ACCOUNTS CONTACT: ..... PURCHASING OFFICER: .....  
 NATURE OF BUSINESS: .....  
 COMPANY NAME: .....  
 SOLETRADING / PARTNERSHIP / LIMITED COMPANY / TRUST/ OTHER: (please circle)  
 IF A LIMITED COMPANY DATE OF INCORPORTAION AND INCORPORATION NUMBER: .....

NAME & ADDRESSES OF SOLE TRADER, TRUSTEE, PARTNERS OR DIRECTORS (ALL PARTNERS OR DIRECTORS REQUIRED):

SURNAME	GIVEN NAMES

TRADE REFERENCES (IF OUTSIDE OF AUCKLAND, PLEASE SUPPLY ADDRESSES)

	COMPANY NAME	CONTACT NAME	PHONE NO
1.			
2.			
3.			

NB: NZIG, PETROL ACCOUNTS, REPCO AND FARMERS TRADING WILL NOT GIVE REFERENCES.

I/We irrevocably authorise any person or company to provide R A JOHNSTONE & CO LTD with information as they may require in response to credit enquiries. I/We hereby make application for a credit account to be opened in the above name and irrevocably authorise any company or person to provide R A JOHNSTONE & CO LTD with such information as they may require which satisfies their credit enquiries.

I/We warrant that the foregoing information is correct to the best of my/our knowledge, and that I/We have read, understood and agree to be bound by the R A JOHNSTONE & CO LTD Terms of Trade as set out attached and updated in its website. Upon signing this credit/account application I/We also understand and accept that the terms and conditions of the Terms of Trade will govern every order or confirmation of quotation that I/We enter into with R A JOHNSTONE & CO LTD for the purchase of Goods or Services and that the Terms of Trade also constitute a Security Agreement for the Goods and the proceeds from sale thereof as Collateral. I/We hereby assent for the purposes of s36 (b) of the Personal Properties Securities Act to the terms of this Application for Credit/Account and Terms of Trade for Goods and Services and to the retention of title clauses creating a Purchase Money Security Interest in all and any Goods previously supplied and in any and all Goods that will be supplied in the future that remain unpaid by us/we up to the credit limit agreed in this Application for Credit/Account. I/We further hereby waive the right to receive a verification statement for purposes of s148 of the Act.

I/We warrant to R A JOHNSTONE & CO LTD that I/We are authorised Directors, Employees or Agents of the Applicant to enter into this contract on behalf of the Applicant. I/We agree to advise R A JOHNSTONE & CO LTD of any equity changes in the Customer's business.

SIGNATURE ..... POSITION / TITLE .....

(PLEASE PRINT NAME) ..... DATE .....

<b>OFFICE USE ONLY:</b> APPROVED by .....	CREDIT LIMIT .....	A/C NO: .....
DATE OPENED: .....	REP CODE: .....	TERRITORY: .....
		CLASSIFICATION .....



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## **APPLICABLE TERMS AND ACCEPTANCE OF ORDER**

These Terms and Conditions of Trade between **R A JOHNSTONE & CO LTD** ("RAJ") and the Customer (the "Customer") shall apply to all orders including but not limited to machinery, equipment, parts and accessories, auto care products, panel beating, spray painting products and display stands by RAJ ("Goods") and technical advice and labour for technical workmanship for repair ("Services").

These terms and conditions shall prevail and take precedence over any document or oral message from the Customer. Where RAJ fails to enforce any terms or conditions under this contract RAJ will not be deemed to have waived these rights with respect to any term or condition or right.

**The Customer and RAJ acknowledge that these Terms and Conditions of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods supplied by RAJ and the proceeds from the sale of all Goods. The Customer shall also agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of RAJ.**

### **• Price**

RAJ shall publish a list of its Goods and if price is not listed with the Goods the price of Goods and Services shall be the prevailing price listed in its website at the time. [www.raj.co.nz](http://www.raj.co.nz)

RAJ may also confirm the price of Goods as a quotation and the Customer shall confirm acceptance by providing an order to RAJ or signing the RAJ quotation or sending an electronic confirmation to RAJ.

Quotations of Goods shall be valid for thirty (30) days from the date of publication but no quotation will constitute an offer unless signed by RAJ and RAJ may withdraw any quotation before the Customer's signed acceptance.

The price may be increased if the Customer varies or alters its requirements for the Goods or Services. Variations and alterations may result from changes to instructions from the Customer requiring a changed basis for the cost of Goods or Services OR additional parts, materials or Services. Any variations regarding price or supply to that agreed in the order during the period of supply shall be confirmed in writing by RAJ and take precedence over that part of the order so affected.

### **• No cancellation for Make to Order Goods**

Upon acceptance of a Customer order to RAJ for Goods or Services that are designed or procured specifically for the Customer (meaning non standard or indented to order) cannot be cancelled without the Customer paying the full cost of the manufacture or procurement of the Goods or Services to the time of cancellation.

### **• Payment**

Payment shall be made according to the terms stated by RAJ in its quotation or invoice which shall be cash, cheque, bank card or electronic funds transfer being:

- (1) full payment upon delivery, OR
- (11) agreed progress payments, OR
- (111) full payment by the 20<sup>th</sup> of the month following the date of invoice

The Customer agrees to make payment of all amounts due to RAJ without any delay or deduction whether by way of set-off or counterclaim even under dispute of the invoice.

The Customer agrees that RAJ has sole discretion to apply payments from the Customer to any transaction or RAJ invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

### **Interest for Late Payment**

RAJ may charge the Customer interest on any monies outstanding under this contract on a daily basis at a rate equal to 5% above RAJ's bank indicator lending rate. Interest is payable from the date payment was due until the date RAJ receives payment. RAJ's right to charge interest is without prejudice to RAJ's other rights or remedies for the Customer's default in failing to pay on the due date.

### **• Suspension of Contract for Non Payment**

If at any time RAJ reasonably deems the credit of the Customer to be unsatisfactory, it will require the Customer to provide at the Customer's cost, security for payment and/or RAJ may suspend performance of its obligations including suspension of the supply of Goods or Services under this contract.

RAJ may secure any or all Goods previously supplied by RAJ and in possession of the Customer under the Retention of Title clause to the value of the outstanding amount owed until payment is made in full OR until security is provided to RAJ's satisfaction and RAJ may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including debt collection and legal costs.

### **• Delivery**

Delivery by RAJ to a carrier normally used by RAJ shall constitute delivery of Goods to the Customer and the Customer shall accept risk in the Goods once the Goods are in the care of the carrier and the Customer agrees that RAJ shall not be liable for damage caused by the carrier. Completion of repair or servicing of the Goods shall constitute delivery of Services.

Delivery by RAJ to the premises of the Customer shall also constitute delivery and the Customer agrees that risk in the Goods shall pass to the Customer once the Goods are delivered. The Customer also agrees that RAJ shall not be responsible for the validity of the person accepting the Goods on behalf of the Customer at the time of delivery.

Delivery of Goods when RAJ advises the Customer that Goods are ready for delivery will also constitute delivery.

Goods or Services that are finished items but only part of an order may be delivered by instalments at RAJ's discretion and in such case each delivery will be regarded as a separate contract and any Goods or Services delivered shall be paid by the Customer in accordance with the terms of payment.

Where RAJ has performed part or all of the supply of Goods or Services at a time agreed in the order but where delivery is delayed or returned because of any act, omission or delay by the Customer RAJ will require the Customer to pay that portion of the contract price which represents the costs incurred by RAJ in carrying out supply and RAJ may also charge stand by costs while the Customer renders their site ready.

RAJ will make every effort to ensure delivery of Goods and Services on time but will not be liable for any loss or damage or consequential loss to the Customer arising from delays in delivery.

### **• Personal Property Securities Act**

The Customer shall inform its creditors of the terms upon which it buys Goods from RAJ and that RAJ may create and register a Purchase Money Security Interest under the PPSA for any and all Goods and that the Customer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act.

The Customer agrees to inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of RAJ and title to the proceeds of sale.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by RAJ. The security interest granted in the Collateral has the same priority in relation to any and all of the Goods supplied to the Customer at any time

### **• Risk, Ownership and Title**

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time of delivery of the Goods into the Customer's control and the Customer shall properly insure the Goods from theft, fire or loss damage. Where the Customer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Customer agrees to pay RAJ for the full cost of the Goods.

The Customer agrees that RAJ has legal and equitable right to title in all and any Goods supplied that remain unpaid and ownership shall only pass to the Customer when the contract price is paid. The Customer is hereby authorised to use the Goods in the ordinary course of business as fiduciary agent and bailee of RAJ until the Customer pays RAJ in full without deduction or setoff. For as long as ownership in the Goods is retained by RAJ the Customer may use the Goods only in such a way that they are identifiable as the property of RAJ.

If the Goods including the value of Services, the subject of this contract, have become the constituent of mixed with or attached to any other goods or property of the Customer, then a proportion of the value of those goods or property to the value of RAJ's Goods or value of Services shall belong to RAJ.

Where the Goods or Services remain unpaid the Customer hereby irrevocably gives RAJ, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours in accordance with the PPSA repossession clauses, to search for, inspect and remove any of the Goods supplied in which RAJ has retained ownership.

The Customer will not hold RAJ responsible for any economic or consequential loss that the Customer may suffer as a result of the Goods being removed or dismantled from the property of the Customer.

RAJ may resell possessed Goods and credit the Customer with the proceeds of sale (less depreciation, wear and tear) and the Customer will still be liable for any outstanding monies.

#### • **Title upon Sale of the Goods to a Third Party**

Notwithstanding that property in the Goods is retained by RAJ, the Customer is hereby authorised to use or sell the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of RAJ until the Customer pays RAJ in full without deduction or setoff: provided that such authority may be revoked by written notice at any time if RAJ deems the credit of the Customer to be unsatisfactory or if the Customer is in default of its obligations under the contract or any other contract between RAJ and the Customer.

Where any Goods in respect of which title has not passed to the Customer are sold by the Customer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Customer shall be held upon trust by the Customer for RAJ. Proceeds of sale so received by the Customer shall be held as a separate fund in trust for RAJ and shall first be applied towards the satisfaction of all indebtedness of the Customer to RAJ.

#### • **Company Warranty & Liability**

RAJ's liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty manufacture or from damage proven to occur before delivery by RAJ or defective Services. If the Customer uses the Goods for other purposes than that specified by RAJ in its publications or MSDS or packaging the Customer agrees to be responsible for the fitness of the Goods for the purposes required by the Customer and RAJ shall not be responsible and the warranty will not apply to Goods where the Customer fails to ascertain the correctness of the Goods for purposes intended by the Customer.

The warranty of manufactured products and parts shall be the warranty of the original manufacturer as to merchantable quality and fit for purposes declared in its packaging or publications or where this is not available fitness for purpose is the responsibility of the Customer.

The warranty on Goods or Services shall be six (6) months from the date of delivery by RAJ TO THE CUSTOMER for business to business sales and a further six (6) months from the date of delivery by THE CUSTOMER TO THE CONSUMER for business to consumer sales.

Where RAJ accepts liability for damage or defect under its warranty and elects to repair or replace Goods or Services it shall repair or replace the Goods to their original condition and replace Services but where this cannot be done RAJ will refund the purchase price in full.

RAJ shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of RAJ's obligations arising under or in connection with the contract including delays in the delivery of Goods or Services or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of RAJ, its servants, agents or contractors.

RAJ shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lockout, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond RAJ's reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of the contract.

#### ▪ **Consumer Guarantees Act 1993**

WHERE THE CUSTOMER IS THE BUSINESS END USER - it is acknowledged that where the acquisition of Goods by the Customer from RAJ is deemed to be for the business purposes of a business, these terms shall have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.

WHERE THE CUSTOMER RESELLS THE GOODS TO A THIRD PARTY CONSUMER FOR HOUSEHOLD OR DOMESTIC USE - the Customer shall be mindful of its obligations under the Act to offer repair, replacement or full value of the Goods to the purchasing consumer subject to the claims conditions and upon informing RAJ where damage or defects occur. RAJ shall determine the option to be taken at its sole discretion and shall inform the Customer.

The Customer may use published material and instructions of care for the Goods provided by RAJ but shall not, give or make any undertaking, assertion or representation in relation to the Goods to any other person or company. If the Customer makes any other representations to the purchaser the Customer shall indemnify RAJ against any liability or cost incurred by RAJ as a result of any breach by the Customer of this provision.

#### • **Claims for Defective Goods or Services, Discrepancies and Shortages**

RAJ may, at its discretion, repair or replace any damaged or defective Goods or Services provided that the Customer advises RAJ of the claim within fourteen (14) days of the defect occurring together with a claim specifically identifying the damage or defect(s); and provided that the Customer does not continue to use the Goods once the defect is known. Discrepancies and shortages of parts must be notified to RAJ with fourteen (14) days of delivery.

#### • **When Claims will not be considered**

RAJ's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Customer agrees that RAJ will not consider claims from the Customer in respect of Goods which:

- (a) the Goods have not been paid in full and according to the terms of payment.
- (b) the defect is due to or resulting from damage of misuse or use contrary to the printed instructions of the Company for maintenance of care while in the possession of the Customer.

##### **Common misuse is:**

- not stocking the Goods in accordance RAJ instructions or instructions on the packaging or label.
  - the Goods are used for purposes other than for the description of use.
  - the Goods are subject to impact or heavy loads during stocking.
- (c) the defect or failure is caused by the Customer or a third party on behalf of the Customer attempting altering or mixing of the Goods with other goods.
  - (d) the defect or failure is due to environmental conditions of the Customer's site causing deterioration.

If the Customer does not comply with the above requirements for warranty and claims the Customer will be deemed to have accepted the Goods and RAJ will not incur any liability whatsoever in relation to the Goods.

#### • **Claims for Goods Incorrectly Ordered**

RAJ reserves the right to allow claims for Goods that are incorrectly ordered by the Customer (provided that they are not made to order) by retaining fifteen per cent (15%) of the invoice price plus freight costs as an administrative charge and handling fee.

Claims for Goods incorrectly ordered will not be recognised by RAJ unless the Goods are in original condition and unless the Customer advises RAJ within seven (7) days of delivery.

#### • **Consigned Goods**

The Customer agrees that Goods supplied on consignment by RAJ will be under the risk of the Customer meaning under the care and responsibility of the Customer but shall always remain the property of RAJ and will be used only for purposes agreed by RAJ and will not be loaned to any third party. Goods must be kept in their whole only and not re-assembled or parts changed or added or mixed with property of the Customer. The Customer further agrees to pay RAJ for any loss damage to consigned Goods while under the care of the Customer. The Customer agrees that Display stands and display boards, product storage equipment, cabinets etc, dispensers and equipment to apply RAJ products provided by RAJ are for RAJ supplied Goods only.

#### • **Grounds for Termination by RAJ**

RAJ immediately on written notice to the Customer may terminate this contract if an Event of Default of payments due to RAJ by the Customer occurs for any reason.

Upon the termination of this agreement for any reason, all rights of the Customer granted by this agreement shall terminate. Terminations of this contract shall not relieve the Customer of its obligations to pay all monies owed by it to RAJ on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms and conditions of this contract.

#### • **Dispute and Arbitration**

In the event of any dispute between RAJ and the Customer arising out of this Contract, the Customer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and heard in Auckland and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

**Upon signing the RAJ Credit Application OR providing an order to RAJ the Customer agrees that these Terms and Conditions of Trade superseded by revised terms and conditions dated and posted to the RAJ website shall apply**