

Hallmark Industries Ltd Application for Credit Account

Section 1 – Customer Details			
Full Legal Name			
Trading as			
Street Address			
Postal Address			
Phone Number		Fax Number	
Type of Business			
Date Commenced Business		GST Number	
Bank and Branch		Insurer	
Accountant & Firm		No of Employees	
Officer Authorising		Position	
Contact name for AIC's Payable		Email address	
Contact name for Purchases		Email address	
Please tick One: Registered Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Other <input type="checkbox"/> please specify:			
Registered Companies <input type="checkbox"/>	Paid up Capital	\$	Co. Registration Number

Section 2 – Limited Liability Company			
Company No:		Registration Date:	
Address of Registered Office:			
Type of Business:			
Name & Address of Current Directors:			
Full Name	Residential Address	Phone	Shareholding

Section 3 – Credit Trading Accounts		
Full Name	Phone No:	Average Monthly purchases

Section 4 – Trade References <i>(Please do not use Telecom/Clear/Telstra/Power Companies/Banks)</i>		
1		
2		

Section 5 – Terms and Conditions
The terms and conditions contained herein "on the back of this page" or "attached" shall form part of this contract.

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Section 6 – ACKNOWLEDGMENT AND AUTHORITY

The person completing and signing this application on behalf of the Customer:

1. Warrants that they are authorized to do so and their execution of this application will bind the Customer;
2. Warrants that the details provided in this form are true and correct;
3. Acknowledges that they have read, understood and agree to be bound by the terms and conditions contained on the reverse of, or attached to, this application;
4. Confirm that no information has been withheld of which Hallmark Industries Limited should be aware in considering this application for credit;
5. Declares that the credit applied for is to be used primarily for business and therefore the Credit Contracts and Consumer Finance Act 2003 does not apply;
6. Acknowledges that where the Customer is a company, personal guarantees may be required as a condition of credit.

The Customer irrevocably authorises the Company to:

1. Collect, retain and use personal information about the Customer, including the information contained in this document, for the following purposes:
 - i. assessing the Customer's credit worthiness;
 - ii. administering the financing, whether directly or indirectly, of the Customers contract(s) and enforcing the Company's rights there under;
 - iii. marketing products and services provided by the Dealer or the Company or any related entity.
2. Provide or disclose information:
 - i. to any person for the foregoing purposes;
 - ii. to employees and agents of the Company and any other person, in the ordinary course of business, for any of the foregoing purposes;
 - iii. to credit agencies for the purpose of maintaining effective credit records.

The Customer irrevocably authorizes any other party to provide information about the Customer's credit activities and credit worthiness to the Company.

The Customer is entitled to have access to and to request correction of personal information concerning the Customer which as been collected by the Company in accordance with the Privacy Act 1993.

The Customer acknowledges that for the purpose of preceding clauses the term "the Company" includes Hallmark Industries Limited and any financier or discounter of the Customer's contract(s), or any Related Company of the Company. The Term "Related Company" has the meaning contained in section 2(3) of the Companies Act 1993.

Note: Where the applicant is a company (other than a listed Public company or a wholly owned subsidiary thereof) or a trust, authorised directors or trustees, (no less than two) will be required to sign this agreement.

SIGNED BY THE APPLICANT (S) OR TWO AUTHORISED SIGNATORIES' DIRECTORS / PARTNERS / TRUSTEES.

1) Signature	2) Signature	3) Signature
Please print Name:	Please print Name:	Please print Name:
Date:	Date:	Date:

TERMS AND CONDITIONS OF SALE

1. **TERMS USED**
 - *Company means Hallmark Industries Limited who is the supplier.
 - *Customer refers to any legal entity or person purchasing from Company.
 - *Goods means all present and after acquired property that is invoiced to the Customer by the Company including (but not so as to restrict this clause) all items including copper pipe and associated fittings, bathroomware, and all associated fittings and valves, and any other goods as described in any invoice rendered by the Company to the Customer.
2. **GENERAL**
 - 2.1 These terms and conditions shall prevail over any Customer's terms and conditions on the intention that any sale of goods or supply of goods by the Company shall be concluded on these terms and conditions only. These Terms and Conditions of Sale ("Terms and Conditions") shall constitute the entire agreement between the Company and the Customer and it is expressly agreed that there are no other understanding, representations or warranties of any kind (express or implied) forming part of this agreement between the parties. In particular:
 - i Any conditions contained in the Customers order, which is inconsistent with, qualifies or is contrary to these conditions shall have no effect unless that condition is expressly accepted in writing by the Company.
 - ii Any variation, waiver or cancellation of the Customer's order shall have no effect unless accepted in writing by the Company. Where the Company accepts cancellation of the Customer's order, the Company may levy a handling charge of up to 10% of the invoice price.
 - iii Where the Customer and the Company agree to a variation in the quantity of goods, the goods shall be priced either at the rate applicable to the original quantity or revised quantity at the absolute discretion of the Company.
 - 2.2 Notwithstanding clause 2.1, the Company may alter or replace these Terms and Conditions at any time and all orders placed subsequently by the Customer shall be upon the altered or replaced Terms and Conditions.
3. **TERMS OF PAYMENT AND SUPPLY OF GOODS**
 - 3.1 All prices listed or quoted are subject to alteration without prior notice. Listed or quoted prices charged will be the current prices at the time of the dispatch of the goods. Quotations are based on current costs of the Company. Any subsequent increase in costs for any reason may be added to the price quoted. Unless otherwise stated, quoted prices do not include installation and maintenance costs, GST, other taxes, import duties, levies or tariffs, freight or insurance all of which shall be added to the price quoted.
 - 3.2 Except as otherwise permitted by the Company, all orders must be in writing and on the Company's standard purchase order form (if any).
 - 3.3 No order shall be binding on the Company until accepted in writing by the Company. Orders may be cancelled once accepted by the Company.
 - 3.4 The Company will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice and the same shall be subject to correction.
 - 3.5 Any deposit must be paid in cleared funds at the time the Customer's order is submitted to the Company for acceptance. In the event that the Customer is in breach of the contract, the Company may cancel the contract and retain the deposit (in addition to any other rights or remedies the Company may have under these Terms and Conditions or at law or otherwise).
 - 3.6 Payment for the Goods supplied by the Company to the Customer shall be made in full on the 20th of the month following the delivery of the goods unless otherwise agreed by the Company in writing. Payment is to be made without deduction or set off in New Zealand dollars in cash or in such other manner as the Company shall stipulate from time to time.
 - 3.8 The Company shall be entitled to deduct from and set off against any payments due to the Company or any related company of the Company by the Customer (or any branch or related company of the Customer) any credits, or amounts outstanding to the Customer or any branch or related company of the Customer.
 - 3.9 The Company reserves the right to restrict or withhold the sale of Goods on credit at its sole discretion and without explanation.
 - 3.10 The Company may in its absolute discretion allocate any sum received from the Customer towards any invoice or amount owing by the Customer, whether:
 - i Goods supplied under this invoice or otherwise. The Company shall not be obliged to make such allocation at the time of receipt but may do so upon any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by this contract and secondly towards any sum in the Company opinion is under secured by this contract.
4. **DELIVERY**
 - 4.1 The Company's delivery obligations shall be satisfied by making the goods available for collection at the Company's premises unless it is otherwise agreed by the Company in writing to dispatch delivery to the location nominated by the Customer. The Company shall use all reasonable endeavours to meet the required delivery date but will not be responsible for any loss or damage (in either case, of any kind and whether direct, indirect or consequential) arising from any delay in the delivery of the goods and services for any reason beyond the Company's reasonable control.
 - 4.2 The Company reserves the right to dispatch the Customers order in one delivery or by installments. Where the Company accepts an order which provides for delivery by installments the Company shall be entitled to payment for each installment delivered (as if it were a separate contract) but failure to deliver any installment shall not entitle the Customer to repudiate the contract as to any remaining installments.
 - 4.3 The Company will select the method of delivery and reserves the right to charge the cost of delivery to the Customer. Where the Customer requests another method of delivery and the Company agrees in writing then the Customer shall meet the cost of that delivery.
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 - 4.5 The Company is not liable to the Customer for any delay or failure to supply the Goods or goods.
5. **SHORTAGES, DAMAGE OR LOSS IN TRANSIT**
 - 5.1 Liability for shortages in the quantity of goods delivered is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the Customer gives notification of the shortage in writing within 7 days of the delivery and provides a reasonable opportunity for the Company to investigate the claim.
 - 5.2 Goods leaving the Company's premises are adequately packed. Claims for damage or loss in transit must be made against the carrier in the prescribed manner:
 - i Prior to acknowledging delivery to the carrier the Customer must ensure that the complete consignment as per the carrier's note has been received.
 - ii Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.
 - iii Within 7 days of receipt of consignment the Customer must ensure that all goods received are in good order and condition.
 - 5.3 No claims will be considered after 7 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by the Company, the Company may at its discretion consider a claim if notice is properly given.
 - 5.4 Details of any claims should be advised to the Company.
6. **RETURN OF GOODS FOR CREDIT**
 - 6.1 Goods supplied in accordance with the Customer's order can only be returned with express approval of the Company.
 - 6.2 Requests to return Goods must be submitted within 10 days from date of supply and the original invoice number must be quoted.
 - 6.3 Where Goods are accepted for credit they must be delivered at the Customer's expense into the Company's store from where they were purchased in original condition and packaging.
 - 6.4 The Company reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 15% of the invoice price and levied at the Company's absolute discretion.
 - 6.5 Goods specifically imported, procured or manufactured on behalf of the Customer can only be returned on such terms and conditions as the Company may agree. Those Goods procured to special order are not returnable unless with the approval of the Company in writing.
7. **RISK AND TITLE**
 - 7.1 Ownership of the Goods and Goods supplied by the Company to the Customer remain with the Company until payment for the goods and goods is made in full.
 - 7.2 Risk (including insurance responsibility) shall pass to the Customer on collection of the Goods by the Customer or on delivery by the Company or by the source to the Customer or his agent or to a carrier for delivery to the Customer.
 - 7.3 Notwithstanding delivery, the Goods shall remain in the sole and absolute property of the Company as legal and equitable owner until the Company has received payment in full of all monies (whether for the goods or otherwise) owed by the Customer to the Company.
 - 7.4 Until title in the Goods is deemed to have passed to the Customer, the Customer shall hold or deal with the Goods and any proceeds of the goods as a fiduciary of the Company and the Customer agrees to:
 - i Keep the Goods in good and secure condition and to return the Goods immediately if called upon to do so by the Company;
 - ii Not diliterate, damage or obscure any labels or other identifying marks applied to the Goods by or on behalf of the Company;
 - iii Keep goods fully insured to their full replacement value against all risks;
 - iv Enable the Goods to be readily identifiable as the property of the Company.
 - v Hold and keep the Goods separately from other property in the possession of the Customer (including Goods already supplied by the Company) and in a manner which enables the Goods to be easily identifiable as Goods supplied by the Company.
 - vi On a sale or other realization of the Goods the Customer shall identify and keep the proceeds of sale in a separate account to be paid to the Company on demand.
 - 7.5 Where the Company has reasonable cause to believe a Default Event has occurred then the Company may at any time without notice, directly or by its agents or servants enter upon any land, premises or property where it believes such Goods may be and, despite section 109 of the Act and in addition to the rights there under, remove the Goods. If the Goods are removed then:
 - i The right of the Customer or any agent of the Customer to possession of any Goods and right to sell or otherwise dispose of those Goods shall immediately and without the necessity of any notice terminate; and
 - ii The Customer will reimburse, indemnify and hold harmless the Company, its employees and agents in respect of any costs, expenses, loss or damage (including such to any third parties) in respect of the exercise of attempted exercise of the Company's remedies; and
 - iii The Company may cancel any or all contracts with the Customer and the Company will not be liable to the Customer therefore; and
 - iv All monies owing by the Customer to the Company on any account whatsoever shall become immediately due and payable.
 - 7.6 The value of such Goods seized shall be assessed as the lesser of the current market value or the invoice value at the time of sale and may be subject to a restocking fee as for Return of Goods.
 - 7.7 The Company shall be entitled to repossess all Goods which it claims belongs to it at any time without notice and for such purpose it shall be lawful for the Company and/or its agent to enter the premises where such Goods are or are believed to be and to remove such Goods. If all or any Goods are wholly or partially attached to, intermingled with or incorporated in any other Goods, the Company may in its sole discretion disconnect, retrieve or sever the Goods, in order to remove them and shall not be liable for any loss or damage caused. The Customer hereby indemnifies and agrees to hold harmless the Company against any damage howsoever caused in relation to such entry and removal including consequential loss or damage to third party or to the Customer.
8. **THE COMPANY'S LIABILITY AND MAINTENANCE GUARANTEE**
 - 8.1 The Customer shall ensure that the Goods ordered are fit and suitable for the purpose of which they are required and the Company is under no liability if they are not.
 - 8.2 In the case of Goods which are not of the Company's own manufacturing the Customer is entitled to only such benefits as the Company may receive under any guarantee given to the Company by the manufacturer of the Goods.
 - 8.3 In lieu of any warranty, condition, or liability by law, the Company's liability in respect of any defect or failure of the Goods supplied, or for any loss, injury, or damage attributable thereto, are limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to the Company, unless otherwise arranged. The Company shall not be liable for consequential or special damages under any circumstances. At the termination of the appropriate period all liability on the Company's part ceases.
 - 8.4 The Company is not liable under clause 7.3 for damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.
 - 8.5 The Company's liability under this contract and the warranty in this clause is confined to the Customer named in this contract it being agreed that the Company has no liability to any purchaser of the Goods from the Customer in that the Customer's rights under the contract are not assignable without the prior written consent of the Company.
 - 8.6 Save for warranties and conditions conferred in writing by the Company on the Customer in relation to particular Goods or services supplied by the Company to the Customer and any manufacturers warranties that are provided or assigned to the Customer, the Company makes no representation and gives no assurances, condition, warranty, representation, statement or term not expressly set out in these terms and conditions or in any quotations or other writing given by the Company to the Customer. Where the Customer acquires Goods or services for business purposes the Customer acknowledges that the provision of the Consumer Guarantees Act 1993 ("the Act") are excluded. In all other cases the provisions of this clause 8 shall be read subject to the Act.
 - 8.7 The benefit of any warranties and conditions conferred by the Company on the Customer are personal to the Customer and are not assignable.
 - 8.8 Claims in respect of defective Goods must be notified within 10 days of receipt of the Goods and defective Goods must be returned within 30 days following delivery. The Customer shall have no claim with regard to Goods which have already been processed, altered or in any way utilized by the Customer. No claim shall entitle the Customer to withhold payment of any sum due to the Company under this or any other contract which the Company may have with the Customer nor shall a claim give any right to set off any payment due by the Customer to the Company.
 - 8.9 The Company's liability in relation to any defective Goods is limited at the discretion of the Company to replacing or repairing Goods or providing credit for the cost of the Goods.
 - 8.10 The Company shall have no liability for any direct or indirect or consequential loss or damage of any kind arising out of defective Goods, any breach of these terms and conditions by the Company, negligence or otherwise.
 - 8.11 Regardless of the legal basis of any claim of any kind made against the Company, the Company's maximum liability to the Customer under any circumstances shall not exceed the price paid for the Goods or services supplied by the Company which gave rise to that claim.
9. **DEFAULT**
 - 9.1 For the purpose of these Terms and Conditions a Default Event shall be one or more of the followings:
 - i Any default by the Customer under the Terms and Conditions including a failure to make payment; or
 - ii The Customer becomes insolvent or is adjudged bankrupt; or
 - iii The Customer ceases or threatens to cease to carry on its business; or
 - iv A receiver, liquidator, official assignee or statutory manager of the Customer's assets is appointed; or
 - v The Customer makes or proposes an arrangement or compromise with creditors; or
 - vi Any judgment of any Court, which is not stayed or satisfied; or
 - vii A change in the effective control and/or management of the Customer;
 - viii The Customer enters into a scheme or arrangement with its creditors; or
 - ix Any other event which in the sole discretion of the Company gives rise to concern as to the timely payment of the Customer's debts.
 - 9.2 Where a Default Event occurs then without prejudice to any other rights or remedies available to the Company, the Company may exercise all or any of the following remedies:
 - i Charge interest, by way of liquidated damages, on or all overdue accounts at the rate of 18% calculated on a daily basis from the date on which the payment was due until payment is made. If default interest is not paid by the month immediately following the Customer's default, the Company may compound the interest charged so that it becomes part of the total outstanding amount owed by the Customer to the Company. Payment of all money is without set off or deduction of any kind.
 - ii Withhold delivery or cancel undelivered orders or portions thereof;
 - iii Cancel any other order or contract or arrangement between the Company and the Customer or suspend performance of such order, contract or arrangement pending payment without being liable to the Customer for any losses (of any kind whether direct or indirect or consequential) it might suffer;
 - iv Require immediate payment of all sums owing to the Company whether due or not;
 - v Offset the amounts owed against any moneys owed by the Company to the Customer; or
 - vi Immediately withdraw any credit facilities or alter or impose any credit limit;
 - vii Demand payment of the arrears as well as payment in advance for any undelivered goods before delivery of those goods.
 - viii Cancel this contract and any other contract between the Company and the Customer, suspend or cancel the Customer's account, and/or cancel any outstanding orders by the Customer and in each case seek damages;
 - ix Appoint a receiver in respect of the Goods (including the proceeds of the same). Any receiver so appointed may take possession of the Goods and re-sell them and otherwise exercise then rights conferred by law on the receiver.
 - x Notwithstanding the passing of time since the Default Event the Company can invoke the provision of this clause at any time.
 - xi The Customer shall pay all costs incurred by the Company including all legal costs, lawyers fees and debt collection costs incurred in the enforcement of these Terms and Conditions.
 - 9.3 The Customer shall upon demand reimburse the Company for all costs (including all legal costs, lawyers fees, and debt collection costs), expenses or other sums incurred by the Company in the recovery of money due and/or Goods, which sum shall also carry interest at the rate specified at clause 9.2(i) if unpaid within one calendar month of demand having been made.
10. **ERRORS OR OMISSIONS**
 - 10.1 Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice, shall be subject to correction and does not invalidate any of the clauses contained within the Terms and Conditions.
11. **FORCE MAJEURE**
 - 11.1 The Company shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods, or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain materials, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the Company's control.
 - 11.2 In such circumstances the Company shall have the right at its discretion to delay the performance of its obligations until such causes cease or to cancel the whole or any part of the contract without incurring any liability to the Customer.
12. **COMPLIANCE**
 - 12.1 The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.
13. **CHANGE OF LEGAL ENTITY**
 - 13.1 The Customer shall notify the Company in writing of any change in legal entity of the Customer and the Customer shall complete a new Credit Application form for the new legal entity if requested by the Company.
14. **CHANGE OF TERMS AND CONDITIONS**
 - 14.1 The Company has the right to unilaterally change these Terms and Conditions by 7 days notice in writing to the Customer.
15. **ORDERS AND CREDIT**
 - 15.1 The Customer reserves the right not to accept an order placed by the Customer, and to change the Customer's credit limit, decline credit or close the account.
16. **PERSONAL PROPERTY SECURITIES ACT 1999**
 - 16.1 The Customer acknowledges that these Terms and Conditions create a security interest in all present and after acquired Goods and any proceeds of sale of the Goods as security for as for all the Customer's obligations to the Company pursuant Personal Property Securities Act 1999 ("the PPSA") and that the Company may register a financing statement to perfect its security interest in the Goods delivered or to be delivered to the Customer in accordance with the provisions of the PPSA.
 - 16.2 The Customer shall promptly provide all information, execute or arrange for the execution of all documents and do all other things that the Company may require to ensure that the Company has a perfected first ranking security interest which will have priority over all other security interest in the goods under the PPSA.
 - 16.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing charge statement registered by or on behalf of the Company under the PPSA and agrees that as between the Company and the Customer, the Customer will have no rights under (or by reference to) section 114(1)(a), 116, 117(i)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where the Company has rights in addition to those in part 9 of the PPSA those rights shall continue to apply.
 - 16.4 The Customer shall immediately upon request from the Company, procure from any person considered by the Company to be relevant to its security position such agreements and waivers as the Company may at any time require.
 - 16.5 The Customer shall immediately notify the Company of any change in the Customer's name, address details and any other information provided to the Company to enable the Company to register a financing charge statement if required.
 - 16.6 For the purposes of section 73 of the PPSA the Customer shall be deemed to have obtained possession of the Goods as at the date upon which the Customer takes delivery of the Goods or the date upon which the Company has completed the delivery of the Goods and they are commissioned, whichever is the later.
 - 16.7 The Customer shall meet all costs the Company incurs in filing a financing statement or financing charge statement under the Act in relation to goods supplied under these Terms and Conditions.
 - 16.8 The Customer waives its rights as a debtor under section 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Act.
17. **CREDIT INFORMATION**
 - 17.1 The Customer and/or Guarantor consents to the Company, any financier or credit rating agency making enquiries of and obtaining any information about the financial standing and credit worthiness of the Customer and/or Guarantor. The Customer and/or Guarantor further consents to the Company making enquiries third parties named as trade references for the same purpose.
18. **SEVERABILITY**
 - 18.1 If any of the Terms and Conditions set in this contract and conditions of sale is held to be invalid, illegal or unenforceable, it shall be severed and the remainder of the contract shall remain in full effect.
19. **PROPER LAW**
 - 19.1 New Zealand Law shall govern the contract and these conditions of sale.
20. **MISCELLANEOUS**
 - 20.1 The Company shall not be deemed to have waived or varied any provision of these terms or conditions or any right or remedy which it may have under these terms or conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by the Company or a person authorized on its behalf. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

Name		Authorised Signatory	Date
Name		Authorised Signatory	Date
Name		Authorised Signatory	Date

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