

APPLICATION FOR AN ACCOUNT



Macpac New Zealand Ltd

NZBN: 942 903 356 9031 COMPANY NUMBER: 3288108

EMAIL: MACPACFINANCE@SUPERRETAILGROUP.COM

Support Office:
Level 5, 1B Homebush Bay Drive
RHODES NSW Australia 2138

Postal:
PO Box 22-225
Christchurch 8022

Please print and complete fully. Uncompleted items may delay the processing of this application. Once fully complete please return all 5 pages either by

EMAIL: macpacfinance@superretailgroup.com or POST to: Macpac New Zealand, PO Box 22-225, CHRISTCHURCH, 8022.

Please note that all references to Macpac in this document mean Macpac New Zealand Ltd

A. CUSTOMER ACCOUNT DETAILS			
TRADING NAME:			
REGISTERED NAME: (If different from above)			
NZBN:		GST NUMBER:	
BUSINESS ADDRESS: (Full Street Address)			
		POSTCODE:	
POSTAL ADDRESS: (If different from above)			
		POSTCODE:	
BUSINESS PHONE:		MOBILE PHONE:	
HOW LONG HAVE YOU BEEN IN BUSINESS?		LENGTH OF CURRENT MANAGEMENT:	
NATURE OF BUSINESS (Please Circle):	PARTNERSHIP	SOLE TRADER	REGISTERED COMPANY CLUB SCHOOL
B. CUSTOMER CONTACT DETAILS			
ACCOUNT CONTACT:	EMAIL: (FOR INVOICES & STATEMENTS):		
MAIN CONTACT:	EMAIL:	PHONE:	
C. CREDIT REFERENCES			
NAME	EMAIL:	CREDIT LIMIT	
1.....		\$.....	
2.....		\$.....	
3.....		\$.....	
AMOUNT OF CREDIT YOU WISH TO APPLY FOR WITH MACPAC NEW ZEALAND LTD		\$.....	
D. PARTICULARS OF PROPRIETOR/S, PARTNER/S OR DIRECTOR/S			
1. Full name	2. Full Name		
..... Position Position		
..... Residential Address Residential Address		
...../...../..... DOB Drivers licence/...../..... DOB Drivers licence
E. AGREEMENT			
In consideration of Macpac New Zealand Ltd providing Goods on credit:			
1. I/we apply to trade with Macpac New Zealand Ltd in accordance with the Terms and Conditions of Sale overleaf and shall observe and perform the Terms and Conditions if this Application is accepted.			
2. I/We acknowledge and agree that Macpac New Zealand Ltd may seek to obtain information about me/us from any credit provider, referee, credit reporting agency or other agency for the purpose of assessing this application and my/our commercial credit worthiness, and use this information for the purpose of collecting overdue payments relating to commercial debts owed by me/us.			
3. I/We hereby acknowledge, affirm and agree the I/we have read and understood the preceding terms of this Application and the Terms and Conditions of Sale overleaf and certify the information supplied herein as the basis for you to grant credit is true and correct.			
4. I/We declare that the credit to be provided to me/us by Macpac New Zealand Ltd is to be applied wholly or predominantly for business or investment purposes (or for both purposes).			
5. I/We are duly authorised to execute this application on behalf of the Customer.			
DATED THIS DAY OF in the Year			
SIGNED FOR AND ON BEHALF OF THE APPLICANT BY DIRECTOR(S) OR AUTHORISED REPRESENTATIVE (Who states he/ she has Authority to sign this application) Proprietor, Partnership or Authorised Representative of:			
..... Name & Position - Proprietor/s, Partner/s or Director/s	 Signature	
..... Name & Position - Proprietor/s, Partner/s or Director/s	 Signature	
IN THE PRESENCE OF (INDEPENDENT WITNESS NOT BEING A PARTY TO THIS AGREEMENT): (Required where signatory is not a Company Director)			
..... Witness Name	 Signature	
..... Residential Address	 Postcode	
Manager Approval		Date	Credit Limit Approved

GUARANTEE AND INDEMNITY

TO: **MACPAC NEW ZEALAND LTD** ("Macpac") In consideration of the supply of goods or services by Macpac to:

(Legal customer name)..... ("Customer")

Please Print Full Name..... ("Guarantor") Please Print Full Name..... ("Guarantor")

At my/our request, covenants with Macpac as follows:

1. If there is more than one Guarantor, "Guarantor" means all of them collectively and each of them individually and this guarantee and indemnity shall be enforceable against the Guarantor jointly and severally. A "Co-surety" includes any other person who otherwise guarantees payment of the moneys owing to Macpac.
2. The Guarantor guarantees:
 - a) the due and punctual payment to Macpac by the Customer of:
 - (i) all moneys which the Customer may now or in the future be liable to pay to Macpac for the supply of goods or services;
 - (ii) any interest payable on overdue accounts; and
 - (iii) any costs, incurred by Macpac, in relation to any attempt to recover moneys owed to Macpac by the Customer.
 - b) the due performance of the Customer's obligations under the terms and conditions of supply of goods or services by Macpac to the Customer on credit.
3. This guarantee and indemnity constitutes a continuing and irrevocable obligation until the Guarantor is expressly released by Macpac and it is not discharged until final payment or settlement of accounts.
4. This guarantee and indemnity constitutes an unconditional obligation that is not affected by anything which, under the law relating to sureties, might otherwise affect the Guarantor, including:
 - a) any change in the legal capacity, rights or obligations of the Guarantor, the Customer or a Co-surety; or
 - b) the fact that, in relation to any of the moneys or any security, guarantee or indemnity for them, Macpac:
 - (i) obtains a judgement against the Customer, a Co-surety or any other person; or
 - (ii) gives up, releases, varies or exchanges or fails to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity; or
 - (iii) grants time or any other concession to, or compounds or compromises with, or does or omits to do anything which affects the obligations of the Customer, a Co-surety or any other person to Macpac or to the Guarantor; or
 - (iv) receives any dividends out of the estate or assets of the Customer, a Co-surety or of any person; or
 - c) any security, guarantee or indemnity held or taken by Macpac being void, defective or informal or ranks after any other security or obligation for any reason; or
 - d) the death, mental or physical disability or insolvency of the Customer, a Co-surety or any other person; or
 - e) a variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of Goods) given to the Customer whether with or without the Guarantor's consent or knowledge;
 - f) any moneys being irrecoverable from the Customer, a Co-surety or any other person for any reason; or
 - g) the cessation of business by any firm or partnership which the Customer or the Guarantor comprises or any change in its membership; or
 - h) where there is more than one Guarantor and only one or more Guarantor, but not all of the Guarantors, has executed this Guarantee and Indemnity.
5. This guarantee and indemnity constitutes principal obligations of the Guarantor and Macpac is not required to make demand first or take action first against the Customer or to marshal its security.
6. If the Customer is wound up, enters administration, made bankrupt or makes a deed of arrangement, composition or compromise in satisfaction of its debts or (being a natural person) dies, the Guarantor must not prove or claim in the assets of the Customer in competition with Macpac. If the Guarantor has a prior claim on the assets of the Customer then the Guarantor will, if directed Macpac lodge a proof of debt and must hold any distribution or payment received on trust for Macpac.
7. The Guarantor charges as beneficial owner and as trustee of every trust (meaning each trust for which the Guarantor holds land or other property as trustee) all the Guarantor's land (including land acquired in the future) in favour of Macpac to secure the payment of the moneys and the performance and observance of the Guarantor's covenants in this guarantee and indemnity.
8. This guarantee and indemnity is binding on the Guarantor and the Guarantor's executors, administrators and successors.
9. The Guarantor fully understands the risks associated with this guarantee and indemnity and freely elects to its execution.
10. This guarantee and indemnity is governed by the laws of New Zealand. The Guarantor submits to the non-exclusive jurisdiction of the courts of New Zealand elected by Macpac.

EXECUTED as a deed this **day of** **in the year**

.....
Guarantor Signature

.....
Guarantor Signature

.....
Name

.....
Name

.....
Residential Address.....

.....
Residential Address

.....
Independent Witness Name & Residential Address (witness not being party to this agreement)

TERMS AND CONDITIONS OF SALE

1. General

- 1.1. Until written notification is received by the Customer from Macpac New Zealand Ltd ("Macpac") that this Application is approved, the Customer is not entitled to any credit for the supply of Goods.
- 1.2. The Customer will be notified in writing of the credit limit if this Application is approved.
- 1.3. These terms and conditions are deemed incorporated into the conditions under which an Application is approved.
- 1.4. Any terms and conditions of the Customer's order that deviate from or are inconsistent with these terms and conditions (regardless of any assertion by the Customer that their terms and conditions shall prevail) are expressly rejected by Macpac unless otherwise agreed to in writing.
- 1.5. Macpac reserves the right to accept or refuse any order for Goods at its discretion and the acceptance of an order may be conditional upon the receipt of a satisfactory credit assessment of the Customer.
- 1.6. The Customer will be notified in writing if Macpac makes any variations to these terms and conditions. If any Goods are purchased after the date of a notice of variation, such purchase will be deemed to be the Customer's acceptance of such varied terms and conditions.
- 1.7. Until an order for the purchase of Goods has been accepted by Macpac either in writing or by conduct, no contract for the supply of Goods shall exist between Macpac and the Customer.
- 1.8. The Customer's personal representatives, successors and permitted assigns shall be bound by the terms and conditions and all obligations contained herein, to the benefit of Macpac and its successors and assigns.

2. Prices and Quotations

- 2.1. Macpac reserves the right to alter prices without notice.
- 2.2. The Customer agrees to pay any GST and any other government duties, levies, or taxes payable in respect of the Goods and services provided by Macpac.

3. Orders, Delivery and Risk

- 3.1. All supplies of goods are subject to availability of stock at the time of delivery.
- 3.2. Macpac reserves the right to deliver and order in instalments and each instalment is considered a separate contract.
- 3.3. Where Goods are delivered, as a customer you may choose the method of delivery and agree to pay all delivery costs, unless otherwise stated.
- 3.4. All claims for shortages and damages must be reported within 48 hours of receipt to Macpac.
- 3.5. As a customer you are responsible for the insurance and risk of the goods from the time they are received by the carrier or collected from Macpac by yourself or appointed agent.

4. Payment

- 4.1. Payment for all Goods shall be made on or before the last working day of the month following the month in which the goods are invoiced.
- 4.2. The only accepted means of paying accounts will be by cash, or electronic funds transfer, all without any deduction, unless otherwise agreed to by Macpac.
- 4.3. Macpac is entitled to charge interest at 2% per month (24%p.a.) on overdue payments at the discretion of Macpac.
- 4.4. Balances of accounts not paid as stated at 4.1 and 4.2 above will be deemed overdue.

5. Account Terms

- 5.1. The Customer will be notified in writing if Macpac makes any alteration to the credit limit.
- 5.2. Macpac may withdraw the Customer's credit facilities at any time without notice if the total prices of all the Goods purchased by the Customer, is less than the Minimum Spend in any six-month period.
- 5.3. The Customer agrees that it will pay to Macpac, upon demand, any reasonable costs incurred by Macpac arising out of any default by the Customer under these terms and conditions or arising out of Macpac enforcing its rights under these terms and conditions including its rights to recover any amount payable by the Customer to Macpac.
- 5.4. Without limiting clause 5.3 and any other provision in these terms and conditions, if the Customer fails to pay any money payable to Macpac when it is due ("the debt"), and Macpac commences any action, either directly, or by its agent (a "debt recovery agent") to recover such payment then Customer agrees to pay to Macpac, over and above the amount of the debt:
 - 5.4.1. The amount of any commission payable to the debt recovery agent, calculated at the agreed amount between Macpac and the debt recovery agent (plus GST);
 - 5.4.2. Other costs reasonably incurred by the debt recovery agent, including costs, providing any service related to the recovery of monies from the Customer; and
 - 5.4.3. Any legal costs incurred by Macpac the company including but not limited to filing fees associated with any proceedings commenced in any Court or Tribunal, legal professional fees and other costs incurred in the pursuit of any claim or remedy against the Customer.

6. Goods Returned for Credit

- 6.1. Goods returned for credit must have a Return for Credit (RFC) authorisation number, which can be obtained from Macpac. To ensure full credit, the authorised RFC number, customer details and original invoice number must be clearly printed and firmly attached to each package being returned. Goods must be unused and of saleable condition with their original packaging.
- 6.2. On return of goods under clause 6.1, Macpac will refund the purchase price less the transportation costs unless otherwise agreed.
- 6.3. Specially manufactured items considered 'Special Orders' will not be refundable under any circumstances.
- 6.4. Any claims for faulty goods will require the customer to complete a RFC in the first instance. The RFC must show the invoice number and the reason for the claim and any other relevant information to enable Macpac to fully investigate the claim.
- 6.5. Faulty goods are not to be returned until the claim has been approved by Macpac and customer advised, in these instances Macpac will reimburse the customer for any reasonable costs incurred in returning these products to our nominated point of supply.

7. Default

If the Customer:

- 7.1. fails to make due and punctual payment of any moneys owed to Macpac; or
 - 7.2. is wound up or goes into bankruptcy; or
 - 7.3. is placed in receivership or voluntary administration; or
 - 7.4. is otherwise in breach of these terms and conditions;
- then:-
- 7.5. all moneys owed to Macpac by the Customer become immediately due and payable; and
 - 7.6. Macpac may, without prejudice to any other rights:
 - 7.6.1. withdraw the supply of Goods on credit;
 - 7.6.2. withhold any future supply of Goods;
 - 7.6.3. enter onto the Customer's premises to retake possession of the Goods and sell them.

8. Property

8.1. The Goods shall be at the sole risk of the Customer on the Customer's receipt of those Goods.

8.2. Until all moneys owed to Macpac have been paid for in full:

8.2.1. Macpac retains ownership of the Goods despite clause 5.1;

8.2.2. the Customer:

8.2.2.1. holds the Goods as Macpac fiduciary agent and bailee and indemnifies Macpac for any damage or alteration to the Goods;

8.2.2.2. must properly store the Goods separately and in a manner which identifies Macpac as the owner;

8.2.2.3. may sell the Goods as bailee for Macpac, but must hold the moneys received on trust for Macpac and account to Macpac for all proceeds of the Goods (including insurance proceeds); and

8.2.2.4. must permit Macpac reasonable access to the Customer's premises to inspect or repossess the Goods the Customer must make arrangements with the Customer's landlord as appropriate to give Macpac entry to the Customer's premises within 24 hours from receipt of notice from Macpac.

8.2. The Customer agrees that:

8.3.1. These terms and conditions create a purchase money security interest under the PPSA in the Goods in favour of Macpac, and until Macpac registers its interest under the PPSR, the Customer shall not be entitled to take possession of any of the Goods.

8.3.2. The Customer authorises and directs Macpac to register its purchase money security interest in the PPSR.

9. Return of Goods

9.1. Goods being returned for credit must have been purchased from Macpac and be returned in an unused and saleable condition together with original packaging.

9.2. For Goods specially ordered for Customer's requirements, no credit will be issued for Goods returned after 14 days from pick up.

10. Warranties and Economical Loss

10.1. The customer has the benefit of conditions and warranties implied by the Fair Trading 1986 ("Act") and nothing in these conditions is intended to exclude restrict or modify any statutory obligation of Macpac if that cannot lawfully be effected.

10.2. Should Macpac be liable for breach of a condition or warranty implied by the Act, Macpac's liability can be so limited to one of the following as determined by Macpac:

10.2.1. the replacement of the Goods or the supply of equivalent Goods;

10.2.2. the payment of the costs of replacing the Goods or of acquiring equivalent Goods.

10.3. To the extent permitted by law, Macpac will not be liable to the Customer under contract, tort, breach of statute or otherwise in any circumstance for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production or loss of profit.

11. Notice

11.1. Any notice to be given to Macpac by the Customer may be sent to Finance at PO Box 22-225, Christchurch, 8022 or emailed to macpacfinance@superretailgroup.com.

11.2. Any notice to be given to the Customer by Macpac shall be sent to the last known address or email whichever is applicable. Notices shall be considered to have been sufficiently delivered 2 days after mailing or in the case of email once it has been sent, unless a notice of a failure is received.

12. Trust and Trustees

Where the Customer is a trustee, the Customer certifies that it has full power and authority to act on behalf of the trust and to enter into these terms and conditions and this Application. The Customer further agrees that it shall be bound by these terms and conditions and that it enters into this Application both personally and as trustee.

13. Notification of Changes

13.1. The Customer must not assign and/or novate this Application and these terms and conditions without the prior written approval of Macpac, which may be granted or declined at Macpac's sole discretion.

13.2. The Customer agrees to notify Macpac within 7 days of any changes to:

13.2.2. the address of the business or the address where the Goods will be situated;

13.2.3. the trading name; or

13.2.4. the persons (Proprietors, Partners or Directors/Trustees) conducting the business.

13.3. Macpac reserves the right to request that a new Application for a Macpac Account be completed on notification of such a change by the Customer in accordance with clause 13.2.

14. Severance

In the event that any part of these terms and conditions is or becomes void or unenforceable, that part is severed so that the validity and enforceability of the remainder of these terms and conditions shall not be affected.

15. Waiver

Macpac's failure to exercise any right or power does not operate as a waiver and a partial exercise of a right or power does not preclude any further exercise of the right or power.

16. Law

These terms and conditions are governed by and construed in accordance with the laws of New Zealand. The Customer agrees to submit to the non-exclusive jurisdiction of the courts of New Zealand as selected at Macpac's discretion.

17. **Communications and opting-out**

- 17.1. Unless the Customer has opted out of receiving marketing communications from Macpac, the Customer agrees to Macpac communicating with the Customer via various channels and media (including by email, SMS, phone and by advertising on certain websites and social media).
- 17.2. The Customer acknowledges and agrees that they can opt out of receiving certain types of marketing communications from Macpac by:
- 17.2.2. For marketing emails- clicking the unsubscribe link in the footer of those emails;
 - 17.2.3. For survey and feedback emails- clicking the unsubscribe link in the footer of those emails; and
 - 17.2.4. For SMS- replying STOP to any SMS communications Macpac sends Customers.
- However, Customer agrees that if the Customer unsubscribes from one type of communication (i.e. marketing emails, survey and feedback emails or SMS) the Customer will continue to receive other types of communications. For example, if a Customer unsubscribes from receiving survey and feedback emails, they will continue to receive marketing emails and SMS communications, unless they have separately unsubscribed from those types of communications.
- 17.3. The Customer agrees that Macpac may send certain transactional messages to the Customer relevant to the Customer's Account. These transactional messages include messages relating to the Customer's Account (like messages confirming the Member's account has been issued with a Statement), important information relating to products and services the Customer has purchased (like health and safety recalls) and updates to Macpac's Privacy Policy. The Customer agrees that transactional messages will not contain an unsubscribe link. If the Customer does not want to receive such transactional messages, the Customer may terminate their Account.

18. **Interpretation**

In these terms and conditions, unless contrary to the context:

- 18.1. **"Account"** means each account of the Customer, held with Macpac, for moneys owing in relation to the supply of Goods;
- 18.2. **"Application"** means the Application for a Macpac Account in which these terms and conditions are incorporated;
- 18.3. **"Macpac"** means Macpac New Zealand Ltd.
- 18.4. **"Customer"** means and includes any natural person, company, partnership or other entity who is the applicant for credit named on page 1 and whose order for the purchase of Goods is accepted by Macpac;
- 18.5. **"Goods"** means and includes goods and services supplied or to be supplied to the Customer by Macpac;
- 18.6. **"GST Act"** means the Goods and Services tax Act 1985 and any ancillary legislation relating to the imposition of goods and services tax;
- 18.7. **"GST"** means any tax chargeable or payable under the GST Act;
- 18.8. **"Minimum Spend"** means the amount of \$1,000, or such other amount as determined by Macpac at its discretion from time to time, and notified to the Customer;
- 18.9. **"PPSA"** means the Personal Property Securities Act 1999 and **"PPSR"** means the Personal Property Securities Register under the PPSA.