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**Trade Credit Account Application**

Customer Name ("Customer"): \_\_\_\_\_  
(Please give full legal name)

Trading Name: \_\_\_\_\_

Where individual: DOB \_\_\_\_\_

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

Postcode: \_\_\_\_\_

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

Postcode: \_\_\_\_\_

Type of Business (Company/Partnership/Trust/Sole Trader etc) \_\_\_\_\_

Director/s/Trustee/s/Proprietor/s' Names: Address: DOB:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Invoices/Statements Emailed: Yes No Email: \_\_\_\_\_ Order Number Required: Yes No

Phone Number: ( ) Mobile: \_\_\_\_\_

Fax Number: ( ) Email: \_\_\_\_\_

Trade Reference/s (Name, address and phone no. of principal supplier/s):

1. \_\_\_\_\_

2. \_\_\_\_\_

**Acceptance of Terms and Conditions of Trade:**

I/We confirm I/we have the authority to obtain credit on behalf of the Customer and hereby apply to open a trade credit account with Bearing and Engineering Technologies Limited ("BETECH") in the name of the Customer. **I/We acknowledge I/we have read and accept the attached Terms and Conditions of Trade and agree to comply with them and bind the Customer to them.**

**Accepted for, and on behalf of the Customer**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Accepted for, and on behalf of Bearing and Engineering Technologies Limited**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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**Personal Guarantee and Indemnity by Director/s, Shareholder/s, Trustee/s etc**

1. In consideration of BETECH agreeing to supply goods and grant credit to the Customer, at the request of the director/s and/or shareholder/s and/or trustee/s and/or proprietor/s of the Customer ("Guarantor/s") the Guarantor/s agree/s to:

- a. Guarantee the performance of and compliance by the Customer of its obligations to BETECH including without limitation the full payment of all invoices, disbursements and other amounts payable by the Customer to BETECH; and
- b. Indemnify BETECH against any loss incurred by BETECH directly or indirectly as a result of any failure by the Customer to perform or comply with any of its obligations to BETECH,

In both cases **in accordance with the provisions set out in clause 19 of the attached Terms and Conditions of Trade which are accepted** effective from the date of execution set out below.

2. The Guarantor/s acknowledge/s that:

- a. It is recommended that the Guarantor/s obtain/s independent legal advice and that in the event that the Guarantor/s choose/s to sign this guarantee without obtaining such independent legal advice he/she/they waive such right by signing; and
- b. He/she/they accept and agree to comply with the attached Terms and Conditions of Trade and that no representation, warranty or undertaking has been made by or on behalf of the BETECH which is not expressly set out in the attached Terms and Conditions of Trade. In deciding to give this guarantee, the Guarantor/s has/have not received or relied upon any advice given by or on behalf of BETECH.

**Signature of Guarantor:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Signature of Guarantor:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Please complete and return to:

Bearing & Engineering Technologies Limited, 26 Harrow Street, Dunedin

Phone: (03) 4740612

Fax: (03) 4719535

# Terms and Conditions of Trade

## 1. Interpretation

- 1.1. Unless otherwise defined or the context otherwise requires, in these terms and conditions of trade:
  - a. "BETECH" means Bearing and Engineering Technologies Limited and includes its employees, agents and representatives;
  - b. "Customer" means any person, partnership, company, body corporate, association or other entity that has requested the supply of Goods and/or Services from BETECH and in the case of a Trade Customer includes the party named as customer in the Trade Credit Account Application;
  - c. "Goods" means all Goods, supplies and materials to be provided by BETECH to the Customer as described in any Order placed by the Customer from time to time;
  - d. "Order" means any order placed by the Customer with BETECH from time to time for the supply of Goods and/or Services whether such order is based on a quotation or otherwise and includes any agreed written variations, supplements to or substitutions of such order;
  - e. "Services" means any services to be provided by BETECH to the Customer from time to time including but not limited to product advice;
  - f. "Trade Customer" means any Customer that has completed a Trade Credit Account Application and which has been approved by BETECH;
  - g. "Trade Credit Account Application" means the application for trade credit account completed by a Trade Customer in order to obtain a credit account with BETECH;
  - h. Reference to any party includes that party's executors, administrators, successors and permitted assigns as applicable;
  - i. Reference to any statute includes all regulations under that statute, all amendments to that statute and any statute in substitution of such statute;
  - j. The singular includes the plural and vice versa;
  - k. The words "includes", "including" and "for example" have no limiting effect.

## 2. Application

- 2.1. All Goods and/or Services supplied by BETECH to the Customer are subject to these terms and conditions of trade which together with the Trade Credit Account Application (applicable to Trade Customers only) shall constitute the entire agreement between the parties.
- 2.2. These terms and conditions of trade shall not be deemed or construed to be modified, rescinded or waived in whole or part unless otherwise agreed in writing by BETECH.
- 2.3. No employee, representative or agent is authorised by BETECH to give any guarantee, warranty or representation in addition to or contrary to these terms and conditions of trade;
- 2.4. These terms and conditions of trade shall supersede all representations, agreements or other communications made by BETECH to the Customer unless otherwise agreed in writing by BETECH.

## 3. Acceptance

- 3.1. The following actions will constitute the Customer's acceptance of these terms and conditions of trade and give rise to a binding contract between the Customer and BETECH:
  - a. The placement by the Customer of an Order for Goods and/or Services; and/or
  - b. The execution of a Trade Credit Account Application (applicable to Trade Customers only).

## 4. Prices

- 4.1. Unless otherwise agreed in writing, prices of the Goods will be the current price on the day of order by BETECH. Notwithstanding the foregoing, prices are subject to change without notice and BETECH reserves the right to increase any price in the event of any increase in the costs of any Goods, change in dimensions or specifications, or other factors affecting the cost of supply and/or delivery of Goods due to circumstances beyond BETECH's control.
- 4.2. Prices unless otherwise stated are exclusive of Goods and Services Tax, other taxes, import duties, levies or tariffs, freight or insurance charges and installation or maintenance charges, which if applicable will be an extra charge.

## 5. Payment

- 5.1. Unless otherwise agreed in writing payment is due in cleared funds on placement of an Order.
- 5.2. In the case of Trade Customers payment is to be made by the 20<sup>th</sup> day of the month ("payment date") following the month of the date of the invoice. In the event payment is not received by the payment date, default interest may be charged by BETECH at the rate of 1.5% per month on the overdue balance compounding on a monthly basis from the due date for payment until the date of payment.
- 5.3. No credit shall be extended on overdue accounts, except by prior written agreement with BETECH.
- 5.4. Payment shall be made without set-off or deduction of any kind.

## 6. Delivery

- 6.1. Dates given for delivery are stated in good faith but are not to be treated as a condition of the contract. No claim shall be made by the Customer on account of late delivery however caused. Late delivery shall not constitute a breach of this contract by the BETECH, and the Customer shall not be able to cancel the contract because of late delivery. Delivery by BETECH to a carrier shall be deemed to be delivery to the Customer.

## 7. Unanticipated events

- 7.1. BETECH shall be entitled to cancel or suspend delivery of the Goods in the event of any delay or default due directly or indirectly to wars, strikes, lockouts, delay or defaults of manufacturers or suppliers, act of God, or any other cause (whether similar or dissimilar) beyond the reasonable control of BETECH. The Customer shall have no claim whatsoever against BETECH in consequence of any such cancellation or suspension.
- 7.2. If the supply or delivery of Goods is delayed as a result of any act, omission, default or request by or on behalf of the Customer, BETECH may without prejudice to its other rights and remedies, require payment by the Customer of such portion of the contract price determined appropriate by BETECH. In the event of such delay continuing beyond reasonable time, BETECH may, without prejudice to its other remedies cancel this contract.

## 8. Return of Goods

- 8.1. Goods may only be returned for credit at BETECH's sole discretion. Without prejudice to the foregoing, no returned Goods shall be accepted by BETECH if they have been tampered with and are not in as new condition or if they are expressly sold on a non-return basis.

## 9. Risk

- 9.1. The risk in the Goods shall pass to the Customer upon delivery.
- 9.2. Pending payment of the Goods in full, the Customer shall be obliged to insure the Goods in the name of BETECH and Customer for their respective interests.

## 10. Title

- 10.1. Notwithstanding clause 9 above, without prejudice to the liability of the Customer to pay for Goods supplied, such Goods shall remain the property of BETECH as legal and equitable owner pending cleared payment in full of all monies due under this contract or in respect of any other debt owed by the Customer to BETECH. The Customer acknowledges that the Customer is in possession of such Goods as bailee for BETECH pending payment in full.
- 10.2. The Customer irrevocably authorizes BETECH to enter any premises occupied by the Customer or other place where the Goods are held or thought to be held at any time to remove any Goods not paid for in full by the customer. BETECH may then resell the Goods and retain the proceeds of such sale. Any shortfall shall be a debt owed by the Customer to BETECH. BETECH shall not be liable for any costs, damages, expenses or any other losses whatsoever occurred by the Customer or a third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever. The Customer indemnifies BETECH for any claims which may arise against BETECH by the Customer or any third party in relation to such costs, damages, costs or any other losses.

## 11. Cancellation

- 11.1. If the Customer:
  - a. Fails to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
  - b. Ceases or threatens to cease to carry on business; or
  - c. Enters into any negotiations for an arrangement or composition with its creditors; or
  - d. Commits an available act of bankruptcy;
  - e. Suffers execution or distress is levied under any judgment; or
  - f. Being a company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the Customer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme of arrangement with its creditors or any class thereof; or
  - g. BETECH becomes aware of any unsatisfactory feature in the Customer's finances which could detrimentally affect payment,BETECH may (in addition to any other rights and remedies available to it) treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing whether due or not shall become due and payable. Any such termination shall be without prejudice to any claim or right available to BETECH.
- 11.2. Upon the occurrence of the above events BETECH will be entitled to repossess and resell Goods which remain the property of BETECH in accordance with these terms and conditions of trade.

## 12. Costs

- 12.1. If the Customer defaults in performing its obligations under this contract and BETECH incurs expenses in enforcing its rights under this contract, the Customer shall pay those expenses (including all costs on a solicitor/client basis and any court costs and disbursements, and any service or collection fees) to BETECH on demand.

## 13. The Privacy Act 1993

- 13.1. The Customer acknowledges that personal information collected or held by BETECH (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:
  - a. Administering whether directly or indirectly, BETECH's contracts and enforcing BETECH's right under such contracts;
  - b. Marketing Goods and services provided by BETECH;
  - c. Ascertaining at any time the Customer's creditworthiness and obtaining at any time credit reports, character references or credit statements;
  - d. Enabling BETECH to make enquiries with any credit agency regarding the Customer's credit history or notify such credit agency of any payment default by the Customer and the Customer authorises any such credit agency to hold such information on record for the purpose of providing its credit reporting service; and
  - e. Enabling the Customer to communicate with BETECH for any purpose.
- 13.2. The Customer authorises BETECH to obtain at any time from any person or entity, any information BETECH may require to process and/or accept any application for credit the Customer may make to BETECH or to perform or complete any of the other purposes for which the Customer has provided personal information to BETECH. The Customer authorises any such person to release to BETECH any personal information that person holds concerning the Customer.

## 14. Liability

- 14.1. If the Customer is a "Consumer" who acquires the Goods from BETECH for the purposes of a business, the Customer agrees that the warranties contained in the Consumer Guarantees Act 1993 will not apply and these terms will apply instead.
- 14.2. The conditions, warranties and guarantees contained in the Sale of Goods Act 1908, to the extent permitted, are hereby excluded.
- 14.3. BETECH's liability to the Customer, whether by act or omission or negligence is limited to the lesser of (i) the amount (excluding GST) invoiced to the Customer for the relevant Goods and/or Services, or (ii) the cost of repair of the relevant Goods. BETECH shall have no liability for any consequential, indirect or special loss, damage or injury suffered by the Customer.

## 15. Personal Property Securities Act 1999 ("PPSA")

- 15.1. This Customer grants to BETECH a Security Interest in the Goods and their Proceeds to secure the obligation of the Customer to pay the purchase price for all Goods and/or Services and any other obligations of the Customer to BETECH under this contract ("Indebtedness") and where the Goods and/or Proceeds are not readily identifiable or traceable or their full recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all present and after acquired property of the Customer to the extent required to secure the Indebtedness.
- 15.2. The Customer consents to BETECH registering its Security Interest on the Personal Property Securities Register. The Customer shall on request and at its own expense provide all reasonable assistance and relevant information to enable BETECH to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce BETECH's Security Interest in accordance with the Personal Property Securities Act 1999 ("PPSA").
- 15.3. Until the Customer has paid all amounts owing to BETECH the Customer shall at all times ensure that:
  - a. The Goods supplied by BETECH, while in the Customer's possession, can be readily identified and distinguished; and/or
  - b. All Proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and traceable.
- 15.4. The parties agree to contract out of the PPSA to the extent that section 107 applies for the benefit of, and does not impose a burden on, BETECH. For the avoidance of doubt nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to any Security Interest created pursuant to these terms and conditions of sale and the Customer waives its rights under Sections 116, 120, 121, 125, 131 and 148.

15.5. Notwithstanding any reference to a particular invoice/Order, where any sum remains outstanding by the Customer on more than one invoice/Order, any payments received by BETECH may at BETECH's discretion, at the time of receipt or at any time afterwards, be allocated towards any invoice that BETECH determines.

15.6. For the purposes of this clause defined terms which have not already been defined in these terms and conditions of trade shall have the meanings ascribed to them in the PPSR.

#### **16. Change of Trading Entity**

16.1. In the case of a Trade Customer, the Customer shall notify BETECH in writing in advance of any changes in the Customer's name, trading entity or ownership of the Customer's business and BETECH may in its discretion require the Customer to complete a new Trade Credit Account Application. The Customer acknowledges that in the event of the sale of the business the account is not transferrable and the new owners must apply for approval for a Trade Credit Account Application in the normal way.

#### **17. Copyright**

17.1. All information provided by BETECH to the Customer including all drawings, specifications and other technical information is the intellectual property of BETECH and copyright of same remains vested in BETECH.

#### **18. General**

18.1. These terms and conditions of trade may be varied by BETECH at any time. New terms and conditions will be enforceable by BETECH from the date they are provided to the Customer.

18.2. If any part of these terms and conditions of sale is deemed to be illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these terms and conditions of sale are not affected.

18.3. The Customer and BETECH acknowledge that for all purposes for any court action arising out of these terms and conditions of trade, the proper registry of the court for the filing of and hearing of any claim is at Dunedin in New Zealand and for all purposes the material part of the contract is deemed to arise at the principle place of business of BETECH.

#### **19. Personal Guarantee and Indemnity by Director/s, Shareholder/s, Trustee/s etc**

19.1. In consideration of BETECH agreeing to supply Goods and services and grant credit to the Customer at the request of the director/s and/or shareholder/s and/or trustee/s and/or proprietor/s of the Customer ("Guarantor/s") the Guarantor/s):

- a. Guarantee to BETECH the performance of and compliance by the Customer of its obligations to BETECH under these terms and conditions of trade including the full payment of all invoices, disbursements and other amounts payable by the Customer to BETECH;
- b. Indemnify BETECH against any loss incurred by BETECH directly or indirectly as a result of any failure by the Customer to perform or comply with any of its obligations to BETECH under these terms and conditions of trade;
- c. Unconditionally and irrevocably undertake that if for any reason the Customer does not pay any amount under these terms and conditions of trade when due, the Guarantor/s will pay the relevant amount upon demand in writing; and
- d. Agree that as between the Guarantor/s and BETECH (and without affecting the obligations of the Customer) the Guarantor/s is/are liable under these terms and conditions of trade as sole and principal debtor and not merely as surety and BETECH shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor/s);
- e. Agree that this guarantee may be registered on the Personal Property Securities Register as a general security against all present and after acquired property of the Guarantor/s and the terms of clause 15 shall apply to any such security to the extent applicable.

19.2. The Guarantor/s covenant/s to BETECH that:

- a. A transfer of BETECH's rights and obligations these terms and conditions of trade and any variation of these terms and conditions of trade will not release the Guarantor/s from liability under this clause 19;
- b. The Guarantor/s liability pursuant to this clause 19 is joint several and unlimited;
- c. No release, delay or waiver of BETECH's rights against the Customer will release, prejudice or affect the liability of the Guarantor/s guarantor or as indemnifier pursuant to this clause 19; and
- d. The Guarantor/s obligations and liabilities pursuant to this clause 19 are to remain in full force and effect until notified by BETECH in writing.

19.3. The Guarantor/s acknowledge/s that:

- a. It is recommended that the Guarantor/s obtain independent legal advice and that in the event that the Guarantor/s choose/s to sign the guarantee without obtaining such independent legal advice he/she/they waive such right by signing;
- b. No representation, warranty or undertaking has been made by or on behalf of the BETECH which is not expressly set out in these terms and conditions of trade; and in deciding to give this guarantee, the Guarantor/s has/have not received or relied upon any advice given by or on behalf of BETECH.