

DISCOVERIES WHOLESALE DISTRIBUTORS LIMITED

Unit 2, 32 Barmac Place, East Tamaki, Auckland, 2013
 Tel: (09) 272 7141 Fax: (09) 272 7159. Email: sales@discoveries.co.nz

ACCOUNT APPLICATION FORM

ENTITY DETAILS:

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ("the customer")

(Please tick) Sole Trader Individual Partnership Ltd Company Other (please state):

Trading as: Postal Address:

Physical Address:

Type of Business

(Please tick) Gift Shop Souvenirs Jeweller Pharmacy Crystal/New Age Other

Telephone: Fax: Email Address:

Contact Person – Sales/Purchases:

Contact Person – Accounts Payable:

OWNERSHIP please insert Owner(s) / Directors Name(s) in full

1: Address:

2: Address:

IF LIMITED LIABILITY COMPANY - Address of Registered Office:

Date of Incorporation: Company Registration No:

TRADE REFERENCES

Company	Contact Name	Phone Number	Account open since

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf. I/We warrant to Discoveries Wholesale Distributors Limited that the above information is to the best of my knowledge, information and belief true and correct and that I/we am duly authorised to enter into this application and future contracts on behalf of the customer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am also signing this application form in my/our personal capacity.

Signed Print Name Designation

Dated this day of 20

PERSONAL GUARANTEE

I/we the undersigned Guarantor/s below acknowledge that I/we am/are aware of all the provisions of this application and the terms upon which credit is to be provided to the applicant and I/we hereby confirm that in consideration for Discoveries Wholesale Distributors Limited agreeing to supply goods/services and credit to the applicant I/we jointly and severally personally undertake as principal debtors the payment of any and all monies now or hereafter owed by the applicant to Discoveries Wholesale Distributors Limited and indemnify Discoveries Wholesale Distributors Limited against non-payment by the applicant. I/we and the applicant shall be jointly and severall liable under the terms and conditions of this contract and for the payment of any sums due hereunder

FullName: Signature:

FullName: Signature:

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Discoveries" shall mean Discoveries Wholesale Distributors Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the client, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Discoveries.
- 1.3 "Goods" shall mean all goods, services and advice provided by Discoveries to the customer including without limitation the importing and wholesale supply and export of a range of goods and all associated services and all charges, hire charges, insurance charges, transport charges or any fee or charge associated with the supply of goods by Discoveries to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Discoveries and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Discoveries from the customer for the supply of goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Discoveries to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods provided by Discoveries to any other party.
- 3.2 The customer authorises Discoveries to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Discoveries at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Discoveries between the date of the contract and delivery of the goods.
- 4.3 The price is exclusive of GST and freight, all of which will be an additional charge to the Customer.

5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Discoveries in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 **Please note a 5% discount will be allowed for payment made within seven (7) days of the date of the invoice.**

6. QUOTATION

- 6.1 Where a quotation is given by Discoveries for goods:
 - 6.1.1 The quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

7. RISK

- 7.1 The Goods remain at Discoveries' risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when Discoveries gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to making time of the essence.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by Discoveries passes to the Customer only when the Customer has made payment in full for all Goods provided by Discoveries and of all other sums due to Discoveries by the Customer on any account whatsoever. Until all sums due to Discoveries by the Customer have been paid in full, Discoveries has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with Discoveries until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Discoveries as security for the full satisfaction by the Customer of the full amount owing between Discoveries and the Customer.
- 8.3 The Customer gives irrevocable authority to Discoveries to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if Discoveries believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Discoveries shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Discoveries may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Discoveries reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods are retained by Discoveries pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Customer:
 - 8.5.1 Non payment of any sum by the due date.

- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
 - 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Discoveries remains unpaid.
 - 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Customer.
- 8.6 If the Credit Repossession Act applies to any transaction between the Customer and Discoveries, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

9. PAYMENT ALLOCATION

- 9.1 Discoveries may in its discretion allocate any payment received from the Customer towards any invoice that Discoveries determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by , payment shall be deemed to be allocated in such manner as preserves the maximum value of Discoveries' purchase money security interest in the Goods.

10. DISPUTES AND RETURN OF GOODS

- 10.1 No claim relating to Goods will be considered unless made within seven (7) days of delivery of the Goods.
- 10.2 Any Goods, accepted for return, must be returned in the same condition they were purchased within seven (7) days of purchase. Return freight cost is the customers responsibility. No Goods will be accepted for return without prior approval of Discoveries.
- 10.3 Goods will only be credited when Discoveries sales agent have confirmed that they have been returned.

11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Discoveries which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Discoveries, Discoveries' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Discoveries shall not be liable for:
 - 11.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from goods provided by Discoveries to the customer; and
 - 11.2.2 The customer shall indemnify Discoveries against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Discoveries or otherwise, brought by any person in connection with any matter, act, omission, or error by Discoveries its agents or employees in connection with the goods.
 - 11.2.3 Discoveries will not be liable in any way for any direct or consequential loss arising from late delivery or failure to provide goods promptly.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods from Discoveries for the purposes of a business in terms of section 2 and 43 of that Act.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1 If the customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Discoveries agreeing to supply goods and grant credit to the customer, also sign this contract in their personal capacity and jointly and severally personally guarantee and undertake to Discoveries the payment of any and all other monies now or hereafter owed by the customer to Discoveries. Any personal guarantee made by any party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.

14. CANCELLATION

- 14.1 Discoveries shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 14.2 Any cancellation or suspension of this agreement shall not affect 's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to under this contract.

15. MISCELLANEOUS

- 15.1 Discoveries shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.3 The sale of the Goods to the Customer is on a non-exclusive basis and Discoveries has the right to sell the Goods to other parties at such prices in terms of sale without limitation on each occasion.