

CREDIT APPLICATION FORM	
Name of Individual(s), Organisation or Company	
Trading Name (if applicable)	
Type of Organisation (Company, Sole Trader, Partnership, Other)	
Names of Individual Acting (if a Partnership or Sole Trader)	
Company Number (if applicable)	
GST Number	
Postal Address	
Delivery Address	
Street Address	
Contact Person	
Telephone Number	
Facsimile Number	
Mobile Number	
Email Address (Principal Contact)	
Email Address (Accounts Payable)	

Trade References (required for credit check)	Name:
	Email
	Telephone:
	Name:
	Email
	Telephone:
	Name:
	Email
	Telephone:
Personal Details if Sole Trade or Partnership	Full Name:
	DOB:
	Residential Address:
	Full Name:
	DOB:
	Residential Address:
PARTICULARS OF CREDIT	
Payment Date	[20 th of following month from delivery of invoice]
Credit Limit Sought	\$

By signing and returning this Credit Application (Application), the Customer:

1. confirms that the information supplied in the Application is true, correct and complete and that the Customer will immediately notify Producto Limited (Company) of any material change to any of the information contained in this Application.
2. acknowledges that it has read and understood the attached Terms and Conditions of Trade and acknowledges that this Application should be read together and form part of the Terms and Conditions of Trade (including any variations or replacement).
3. agrees that the Goods supplied by the Company to the Customer are supplied in accordance with this Application and the attached Terms and Conditions of Trade.

EXECUTION		
Signed by the Customer		
Signature:	Name:	Date:
Signature:	Name:	Date:
GUARANTOR		
Name:		
Address:		
Telephone Number:		
Mobile Number:		
Email Address:		
<p>PERSONAL GUARANTEE:</p> <p>The Guarantor jointly and severally guarantees the due and punctual payment by the Customer of all monies due and owing by the Customer to the Company, in respect of all Goods provided to the Customer under the Terms and Conditions of Trade and this Application.</p> <p>The Guarantor accepts that they are liable as a principal debtor in respect of monies owed pursuant to this Application and the Terms and Conditions of Trade. The Guarantor accepts that the guarantee is unaffected by the unenforceability of any payment of such monies, by the liquidation or bankruptcy of the Customer, by the giving of time or any indulgence to the Customer by the Company, the variation of the Terms and Conditions of Trade or any other matter. The Guarantor accepts that the Company may make demand for payment on the Guarantor without demand being made of the Customer.</p> <p>The Guarantor acknowledges that they have read and understood the contents of the Company's Terms and Conditions of Trade and acknowledges that such Terms and Conditions of Trade form part of and will be read together with this Application. The Guarantor further acknowledges that they have been advised too and been given the opportunity to seek independent legal advice prior to signing.</p>		
Signed by the Guarantor		
Signature:	Name:	Date:

TERMS AND CONDITIONS OF TRADE

1. Interpretation

- 1.1 In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:
- 1.1.1 **Application** means the credit application accompanying these Conditions, which shall form part of and be read and construed with these Conditions;
- 1.1.2 **Company** means Producto Limited or any of its subsidiaries
- 1.1.3 **Conditions** means these terms and conditions;
- 1.1.4 **Contract** means a contract for the supply of Goods by the Company to the Customer, comprised of these Conditions and the Quotation;
- 1.1.5 **Customer** means the purchaser of the Goods from the Company;
- 1.1.6 **Goods** means the goods supplied by the Company to the Customer under a Contract;
- 1.1.7 **Quotation** means a quote from the Company setting out the particulars of the supply of Goods; and
- 1.1.8 **Purchase Order** means an order for the Goods placed by the Customer.
- 1.1.9 **Working Day** means a day on which registered banks are open for general banking business in both of the cities in which the customer and Producto's head offices are located in.
- 1.2 **Conflict of Terms:** Unless the Company and Customer agree otherwise in writing in the event of any conflict arising between these Conditions, a Quotation or Purchase Order, the Conditions shall prevail.

2. Supply of Goods

The Company will supply to the Customer, the Goods described in the Purchase Order.

3. Formation of Contract

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 3.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for the any and all loss incurred (whether direct or indirect) by the Company as a direct

result of the cancellation (including, but not limited to, any loss of profits).

- 3.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

4. Delivery and Risk

- 4.1 Where the goods are to be supplied to an address outside New Zealand, delivery dates or arrangements stated in the Quotation shall be treated as an estimate only and the Company shall not be liable to the Customer for any delay arising from manufacturing, shipping or transport.
- 4.2 Delivery will be deemed to have occurred upon delivery of the Goods to the Customer's nominated delivery address or to any agent or carrier. The Customer will insure the Goods for their full insurable value from the time of delivery.
- 4.3 All risk in the Goods will pass to the Customer upon delivery.
- 4.4 If the Customer refuses to accept delivery, the Goods will be deemed to have been delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 4.5 If the Goods are held by the Company on behalf of the Customer, risk is deemed to have passed to the Customer when the Goods would otherwise have been able to be delivered.
- 4.6 The Customer acknowledges that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by the Company to match colour and shade of the Goods, the Company shall not be liable for any loss, damage or costs, however arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.
- 4.7 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Company reserves the right to vary the price with alternative Goods as in per clause 6.3. The Company also reserves the right to halt all services until such time as the Company and the Customer agree to such changes.

5. Ownership

- 5.1 Until the Company has been paid in full for the Goods, the Company and the Customer agree that:

- 5.1.1 title in the Goods remains with the Company;
- 5.1.2 the Company and its agents or servants may, upon giving reasonable notice, enter premises occupied by the Customer to search for and remove any of the Goods supplied by it, without in any way being liable to the Customer or any person claiming through the Customer;
- 5.1.3 if the Company exercises its right to reclaim the Goods it shall be entitled to dispose of them as it sees fit. The Customer will indemnify the Company for any costs incurred by the Company in reclaiming the Goods, including any shortfall incurred by the Company in realising the Goods; and
- 5.1.4 if the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be held on trust for the Company.
- 5.2 The Customer agrees, if required by the Company, to store the Goods separately to enable them to be identified.

6. Prices

- 6.1 For Goods supplied by the Company from New Zealand prices are quoted in New Zealand currency and exclude GST. For Goods supplied by the Company for Australia, prices are quoted in New Zealand currency and exclude GST. Quotations are valid for a maximum of 7 days from the date at which the quote is given and are subject to:
 - 6.1.1 the Customer's Purchase Order matching the quoted details; and
 - 6.1.2 Final confirmation of quotes upon receipt of the Purchase Order.
- 6.2 The Company reserves the right to correct any typographical or clerical errors contained in the prices or specifications in the Purchase Order and/or Quotation.
- 6.3 The Company reserves the right to change the price of the quotation if requested or required due to any delay by the Customer. Any variations from the plan of scheduled services or specification of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Company in the cost of taxes, levies, materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice.

- 6.4 The Customer will accept Goods within a variance of five percent (5%) above or below the quantity quoted in a Purchase Order as full satisfaction of the relevant Purchase Order, provided that where the quantity supplied is below the order quantity, the Company will charge only for the quantity actually supplied. Where the quantity supplied is above the order quantity, the Company will charge for the quantity actually supplied, and the Customer agrees to pay the full invoice price for all such Goods.

- 6.5 The Company reserves the rights to requote the price based on fluctuation in currency exchange rate or increases in production costs if production samples are not approved within 30 days of receipt.

7. Payment

- 7.1 Payment for the Goods will be made on the Payment Dates specified on the approved Application. The Company reserves the right to require the Customer to pay for the Goods (either in full or in part) prior to their supply by the Company.
- 7.2 Time for payment is of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due:
 - 7.2.1 the Company may treat the Contract as being repudiated by the Customer or may until payment in full is made, suspend delivery of the Goods;
 - 7.2.2 the Customer will (if required by the Company) pay interest to the Company at the default interest rate of two and a half percent (2.5%) above the current base lending rate set from time to time by the Company's bankers in New Zealand. Interest shall be payable daily until payment is received; and
 - 7.2.3 the Customer will be liable for all expenses and costs (including legal costs and debt collection costs) in relation to the Company enforcing or attempting to enforce a Contract or these Conditions.
- 7.3 The Customer is not entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim or to withhold any payment without the prior written approval of the Company.
- 7.4 The Company may, at its discretion, delay or terminate the supply of any goods, including existing and future orders for goods, if the Customer's credit account exceeds the credit limit set by the Company. The Customer agrees that the Company shall retain the title of the supplied goods until the

payment is received in full in accordance with the terms of trade.

8. **Warranty**

8.1 Subject to clause 9, the Company warrants to the Customer that the Goods (excluding third party materials) will be free from defects and of an acceptable quality (**Warranty**).

8.2 For Goods not manufactured by the Company, the warranty shall be current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

9. **Exclusion of Warranties and Liability**

9.1 This Warranty does not cover damage, fault, failure or malfunction due to:

9.1.1 external causes, including accident, abuse and misuse; or

9.1.2 normal wear and tear, act of God, fire, flood, earthquakes, war, act of violence or any similar occurrence.

9.2 To the fullest extent permitted by law, but subject to the express provisions of clause 8.1:

9.2.1 the Company gives no representation or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Goods in any contract or other document will not import any such condition or warranty on the part of the Company;

9.2.2 all statutory and implied conditions and warranties excepts as to title are excluded and

9.2.3 it is the responsibility of the Customer to satisfy itself as to the condition and quality of the Goods for its purposes and the Customer accepts the Goods on this basis.

9.3 To the fullest extent permitted by law and except to the extent expressly provided in clause 8, the Company excludes all liability to the Customer or any person claiming through the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply the Goods.

10. **Defects/ Returns**

10.1 The Customer has 5 working days following delivery of the Goods to advise the Company of any defects in the Goods,

any incorrect deliveries or any incorrect pricing (**Notification Period**).

10.2 If the Notification Period expires and the Customer has failed to notify the Company of any defects or missing Goods, then the Goods are deemed to be accepted by the Customer and the Company accepts no liability for claims made after the expiry of the Notification Period.

10.3 The Customer undertakes

10.3.1 that all claim will be supported by a packing note, delivery docket, invoice and copy of the Purchase Order together with the reason for the claim;

10.3.2 that Payment will not be withheld pending settlement of any defects; and

10.3.3 not to dispose of the Goods prior to resettlement of any defects (excluding errors relating to pricing).

10.4 The Company shall not be liable for Goods which have not been stored and used in a proper manner and the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.5 The Company may (in its discretion) accept the return of Goods for credit but this may incur a handling fees of fifteen percent (15%) of the value of the returned Goods plus any freight.

10.6 Goods returned that have had embroidery or screen-printing carried out on them will only be credited if the Goods are found to be faulty and the Customer has complied with clause 10.

11. **Indemnity**

11.1 The Customer indemnifies the Company against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the supply of Goods, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the Company or the negligence of a duly authorised employee or agent of the Company.

11.2 In the event the Company is held to be liable to the Customer, the liability of the Company shall be limited to the total price payable under a Contract for the Goods, or the cost of replacement of the Goods, whichever is less.

12. Default

12.1 In the event that:

12.1.1 the Customer breaches any terms and conditions of a Contract; or

12.1.2 the Customer becomes insolvent, has a receiver appointed, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or

12.1.3 the Customer ceases or threatens to cease carrying on business; or

12.1.4 the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered; **then**

12.1.5 the Company will be entitled to cancel any Contracts it has with the Customer; and

12.1.6 all amounts outstanding under any Contract, whether or not due for payment, immediately become due and payable.

13. Termination

In the event the Customer breaches any of these Conditions or any term of a Contract, the Company may immediately in writing, either suspend supply of the Goods or terminate any Contract it has with the Customer at which point all money due and owing to the Company by the Customer will be payable. Suspension or termination will not prejudice or affect the rights of the Company to make any claims against the Customer.

14. Intellectual Property and Confidentiality

14.1 Copyright in the Goods, including all drawings, designs and other technical information provided by the Company in connection with a Contract is vested in the Company at all times. Use by the Customer of any such information outside the terms of these Conditions will constitute a breach of these Conditions.

14.2 The Customer warrant that all designs, specifications or instructions given to the Company will not cause the

Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by third party against the Company in respect of any such infringement.

14.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawing or Goods which the Company has created for the Customer.

14.4 Any confidential information received by the Company from the Customer shall be used solely for the supply of Goods under a Contract.

15. Consumer Guarantees Act 1993

The parties agree that the supply of Goods under a Contract is a supply for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

16. Personal Property Security Acts

16.1 The Contract constitutes a security interest in all the Customer's present and after acquired personal property including the Goods supplied by the Company to the Customer for the purposes of the Personal Properties Securities Act 1999 of New Zealand (**NZPPSA**) as amended or replaced from time to time and, where goods are supplied in Australia, the Personal Properties Securities Act 2009 of Australia (**AUPPSA**) as amended or replaced from time to time.

16.2 The Company can register or perfect the security interest recognised under clause 16.1 in any means possible in the jurisdiction of the Customer (and any other jurisdiction the Company deems necessary or desires) to ensure that the Company has an enforceable security interest against the Customer in the Goods and all amounts due under the Contract, including any future amounts.

16.3 The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to ensure that the Company's security interest over the Customer is enforceable, perfected and otherwise effective, or give any notification in connection with the security interest to obtain the priority required by the Company and enable the Company to exercise its related rights, or register (and renew registration) a financing statement for a security interest in favour of the Company.

16.4 Everything the Company is required to do under clause 16.3 above is at the Customer's expense. The Customer agrees to pay or reimburse the Company for any or all of those costs.

17. NZPPSA – Goods Supplied in New Zealand

17.1 For Goods supplied in New Zealand, and to the extent that Part 9 of the NZPPSA applies:

17.1.1 the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the NZPPSA which are for the Customers benefit, or place any obligations on the Company in the Customers favour, shall not apply; and where the Company has rights in addition to those in Part 9 of the NZPPSA, those rights shall continue to apply; and

17.1.2 without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the NZPPSA, and its rights to receive a copy of a verification statement under section 148 of the NZPPSA in respect of any financing statement or financing change statement registered by the Company.

18. AUPPSA – Goods Supplied in Australia

18.1 Where the Goods are supplied in Australia, the following provisions of the AUPPSA, to the extent referred to below, shall not apply and shall not place any obligations on the Company in the Customer's favour:

18.1.1 section 95 of the AUPPSA, to the extent that it requires the Company to give a notice to the Customer;

18.1.2 section 96 of the AUPPSA;

18.1.3 section 125 of the AUPPSA;

18.1.4 section 130 of the AUPPSA, to the extent that it requires the Company to give a notice to the Customer;

18.1.5 subsection 132(4) of the AUPPSA; and

18.1.6 section 135 of the AUPPSA.

19. Disputes

19.1 *Negotiation:* If a dispute arises (**Dispute**) between the parties in relation to the supply of Goods then the parties will endeavour to settle the Dispute by way of good faith negotiation. It is further agreed that if any account is in dispute, the undisputed portion of the accounts shall be

payable in accordance with the normal terms of payment as provided in clause 7. If the parties are unable to resolve the dispute within five Working Days, the Dispute shall be resolved in accordance with clause 19.2

19.2 *Mediation:* In the event that the Dispute is not resolved by negotiation, the matter may be referred to mediation by any party by written notice. In the event that the matter is referred to mediation, the parties shall agree within five Working Days of the matter being referred to mediation on a mediator. In the event the Dispute is not resolved by a completed mediation within a further 20 Working Days, any party may refer the matter to arbitration.

19.3 *Arbitration:* If a Dispute is not settled under clauses 19.1 or 19.2, then the Dispute shall be submitted to, and settled by, arbitration by a sole arbitrator in accordance with the provisions of the Arbitration Act 1996. The arbitrator shall be appointed by the parties or failing agreement within five Working Days after the request to appoint an arbitrator by one party to the other, the arbitrator shall be appointed by the president for the time being of the New Zealand Law Society.

20. Miscellaneous

20.1 If any part of these Conditions is held to be unenforceable, the part concerned will be deleted or modified to the minimum possible extent necessary the remainder of the Conditions enforceable will remain in force.

20.2 No delay or failure by the Company to exercise its rights under a contract operates as a waiver of those rights.

20.3 The Customer may not assign or transfer any of its rights or obligations under or in connection with any Contract to any third party without the prior written consent of the Company

20.4 The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.

20.5 Variations to any Contracts must be agreed in writing between the parties. The Company may amend the conditions from time to time by giving the Customer notice in writing of such amendments.

20.6 The Customer agrees that the Company may obtain information about the Customer from any source including credit assessment and debt collecting and the Customer consents to any person providing the Company with such information.

- 20.7 The Company shall not be liable for any loss or damage caused by its failure or delay to supply the Goods due to anything outside the reasonable control of the Company, including but not limited to acts or omissions of the Customer, breakdown of plant or machinery, shortage of labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, earthquakes, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention or control, transport delays, accidents or embargoes of any kind.
- 20.8 In the event that the Customer gives information relating to measurements and quantities of the Goods required to complete the services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Company place an order based on these measurements and quantities. The Company accepts no responsibility for any loss, damages, or cost however resulting from the Customer's failure to comply with this clause.
- 20.9 The Customer will pay all costs and expenses (including legal fees) incurred by the Company in exercising any of its rights under any Contract.
- 20.10 Any notice given by one party to the other will be deemed to have been delivered 48 hours after posting to the recipient's registered office or last known address and immediately, if forwarded by facsimile or email.
- 20.11 All Contracts made between the Company and the Customer will be governed by and construed in accordance with the laws of New Zealand and the Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand Court.