



CATCH OF THE DAY

CATCH OF THE DAY LIMITED
Unit 3, 76 Porana Road, Hillcrest,
Auckland 0627
Ph: (09) 283 0194
Em: info@cotd.co.nz

Account Application Form

Date Application Received \_\_\_\_\_

Customer Details

Nature of Organisation Sole Trader Partnership Limited Company Trust Other
Legal Name
Trade Name (if different)
Registered Office Address
Delivery Address
Billing Address
Telephone Fax
Email Website

Business Details

Company Number Date Incorporated
GST Number SVR / AVP Code

Details of Owner + Partners (if Partnership) or Details of Directors (if Limited Company)

Full Name Home Address Home Phone Mobile
Email
Full Name Home Address Home Phone Mobile
Email

Details for Sales / Purchasing

Contact Person for Sales / Purchasing
Contact Number
Email for Order Dispatch Confirmations
Estimated Monthly Purchase \$
Credit Limits Required \$

Details for Accounts

Contact Person for Accounts
Contact Number
Email Address for Accounts
Bank and Branch
Account Number

Our Bank account number for Direct Credit: 06-0103-0792688-00

Trade References

- 1. Company / Contact Person Telephone
2. Company / Contact Person Telephone
3. Company / Contact Person Telephone

You (being the Customer/Client) CONFIRM that you understand and accept the Standard Terms and Conditions of Contract with Catch Of The Day Limited. The terms and conditions set out below govern all of the supplies of goods and services from Catch Of The Day Limited to you. They are effective from the date of signing and will replace all earlier written or oral agreements and any terms and conditions contained in any document issued by Catch Of The Day Limited and purporting to have contractual effect. Your acceptance of any goods and services from us indicates your continuing acceptance of these terms and conditions.

<b>Signed</b>		<b>Dated</b>	
<b>Full name</b>			
<b>Signed</b>		<b>Dated</b>	
<b>Full name</b>			

**GUARANTOR(S)**

The Guarantors named below confirm that they have carefully read the attached Standard Terms and Conditions of Contract of Catch Of The Day Limited ("Terms and Conditions") and JOINTLY AND SEVERALLY GUARANTEE to Catch Of The Day Limited pursuant to the Terms and Conditions herein the due and punctual payment by the Customer of any moneys required to be paid to Catch Of The Day Limited by the Customer of whatsoever nature and kind, including for any breach of the Terms and Conditions, and at any time as prescribed by the Terms and Conditions; and the due and punctual performance by the Customer of all the Customer's obligations, duties, liabilities and covenants contained herein. No indulgence or waiver or extension of the time to pay or any other thing done by Catch Of The Day Limited that would otherwise release the Guarantors(s) from this guarantee, will release the Guarantors from their obligations under this guarantee.

<b>Guarantor:</b>		<b>Dated</b>	
<b>Signed</b>			
<b>Guarantor:</b>			
<b>Signed</b>		<b>Dated</b>	

**OFFICE USE ONLY – TO BE COMPLETED BY FINANCE**

<b>Approved on</b>	
<b>Approved Credit Limits</b>	
<b>Approved Credit Terms</b>	
<b>Direct Debit Authority Form Signed</b>	
<b>Reviewed by</b>	

# Direct Debit Authority

Name of my account to be debited (acceptor) <input type="text"/>				Initiator's Authorisation Code <input type="text" value="0656079"/>	
Name of my bank: <input type="text"/>					
<input type="text" value="0"/> <input type="text" value="0"/>	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/>	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="0"/>	<input type="text" value="0"/> <input type="text" value="0"/>	Approved <hr/> 5607   09/23	
Bank	Branch	Account	Suffix		

From the acceptor to *[insert name of acceptor's bank]* (my bank):

I authorise you to debit my account with the amounts of direct debits from **Catch of the Day Limited** with the authorisation code specified on this authority in accordance with this authority until further notice.

I agree that this authority is subject to:

- The bank's terms and conditions that relate to my account, and
- The specific terms and conditions listed below.

Please include the following information on my bank statement:

Authorised signature/s: <hr/>	Date: <hr/> / /
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### Specific conditions relating to notices and disputes

I may ask my bank to reverse a direct debit up to 120 calendar days after the debit if:

- I don't receive a written notice of the amount and date of each direct debit from the initiator, or
- I receive a written notice but the amount or the date of debiting is different from the amount or the date specified on the notice.

The initiator is required to give you a written notice of the amount and date of each direct debit no less than 2 business days before the date of the debit.

If the bank dishonours a direct debit but the initiator sends the direct debit again within 5 business days of the dishonour, the initiator is not required to give you a second notice of the amount and date of the direct debit.

## CATCH OF THE LIMITED – Terms and Conditions of Trade

Unless otherwise stated these Terms and Conditions shall have priority over any other agreement or amendment.

### 1. DEFINITIONS

- 1.1 "COTD\*" shall mean Catch Of The Day Limited and its successors and assigns.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" are as defined in the Contract and Commercial Law Act 2017 Part 3, Subparts 1-6 and are the Goods supplied by COTD to the Client (and where the context so permits the Terms "Goods" and "Services" are interchangeable).
- 1.4 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.5 "Price" shall mean the cost of the Goods as agreed between COTD and Client subject to clause 4 of this contract.

### 2. ACCEPTANCE

2.1 Any instructions received by COTD from the Client for the supply of Goods shall constitute acceptance of the Terms and Conditions contained herein.

Where such acceptance by the Client is acknowledged by means of electronic transmission the provisions of the Contract and Commercial Law Act 2017 Part 4, Subpart 1, will apply.

2.2 Where more than one Client has entered into this contract, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these Terms and Conditions by the Client the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of COTD.

2.4 None of COTD's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of COTD in writing nor is COTD bound by any such unauthorised statements.

2.5 The Client undertakes to give COTD not less than seven (7) days prior written notice of any proposed change in the Client's name and or any change in the Client's address phone number or business practice and change of ownership.

### 3. GOODS

The Goods are as described on the invoices, quotation, estimate, work authorisation or any other work commencement forms as provided by COTD to the Client.

### 4. PRICE AND PAYMENT

4.1 At COTD's sole discretion the Price shall be either:

(a) The Price shall be as indicated on invoices provided by COTD to the Client in respect of Goods supplied; or

(b) The Price of the Goods shall, subject to clause 4.2, be COTD's quote/estimate Price, which shall be binding upon COTD provided that the Client shall accept in writing COTD's quotation within 30 days.

4.2 Any variation initial order will be charged for, (including but not limited to any variation as a result of fluctuations in currency exchange rates), on the basis of COTD's quotation/estimate and will be shown as extras on the invoice. Payment for extras must be made in full at the time of completion.

4.3 At COTD's sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of order of the Goods/Services and shall become immediately due and payable and is non refundable.

4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other forms. If no date is stated then payment shall be on dispatch of the Goods.

4.5 Upon request by COTD, the Client shall be required to set up and maintain an automatic direct debit to pay COTD and provide evidence of the automatic payment prior or dispatch of the Goods.

4.5 At COTD's sole discretion, payment for approved Clients shall be due 14 days following the date of an invoice/statement posted to the Client's address or addresses for notices, such notice includes the use of email and other electronic transmission devices. COTD may, at its sole discretion set out other due dates of payment.

4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any quotation/estimate given by COTD.

4.7 COTD may in its discretion allocate any payment received from the Client towards any invoice that COTD determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by COTD, payment shall be deemed in such a manner as preserves the maximum value of COTD's money security in the products and services.

4.8 COTD may (in its discretion) charge a minimum order fee, as set out in the schedule available in B2B portal, or at a rate as determined by COTD from time-to-time and charged to the invoice as an extra.

### 5. DELIVERY OF GOODS

5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery..

5.2 Goods delivered to the Client or their Agent must be signed for by a duly authorised person at the point of delivery.

5.3 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of COTD for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.

5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purpose of this contract.

5.5 The failure of COTD to deliver shall not entitle either party to treat this contract as repudiated.

5.6 COTD shall not be liable for any loss or damage whatsoever due to failure by COTD to deliver the Goods (or any of them) promptly or at all.

5.7 COTD may deliver the Goods by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.

5.8 All transportation cost and insurance of the Goods provided by COTD to the Client shall be the Client's responsibility.

### 6. RISK

6.1 If COTD retains ownership in the Goods nonetheless all risk for the Goods passes to the Client on delivery.

6.2 If any of the Goods are damaged or destroyed prior to the ownership in them passing to the Client, COTD is entitled, without prejudice to any of its other rights to remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price of the Goods) to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these Terms and Conditions. The production of these Terms and Conditions by COTD is sufficient evidence of COTD's rights to receive the insurance proceeds without the need for any person dealing with COTD to make further enquiries.

### 7. DEFECTS / RETURNS

7.1 The Client shall inspect the Goods and shall within one (1) day of dispatch notify COTD of any alleged defects, shortage in quantity, damage or failure to comply with the description or order. The Client shall afford COTD the opportunity to inspect the Goods within a reasonable time following dispatch if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall conclusively be presumed to be in accordance with these Terms and Conditions and free from any defect or damage.

7.2 For defective Goods which COTD has agreed in writing that the Client is entitled to reject, COTD's liability is limited to either (at COTD's sole discretion) replacing the Goods or repairing the Goods provided that:

(a) The Client has complied with provisions of clause 7.1.

(b) COTD will not be liable for Goods which have not been stored or used in a proper manner.

(c) The Goods are returned in the condition in which they were delivered and with all packaging material as is reasonable and possible in the circumstances.

7.3 At its sole discretion COTD will accept returns of Goods for Credit if:

(a) COTD is notified within seven (7) days of dispatch by the Customer in writing that the Goods are unsuitable or surplus to requirements, and;

(b) The Goods must be returned within 14 days of notification, in the original packaging and are returned with the COTD provided Returned Goods Authorisation (RGA) form enclosed; and;

(c) At COTD's sole discretion Goods accepted for Credit may incur a restocking fee plus any freight costs.

7.5 The warranty on Goods shall be the current warranty provided by the manufacturer of the Goods. COTD shall be under no liability whatsoever.

### 8. DEFAULT & CONSEQUENCES OF DEFAULT

8.1 Interest on overdue invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgment.

8.2 If the Client defaults on payment of any invoice when due, the Client shall indemnify COTD from and against all of COTD's costs and disbursements including on a solicitor and own client basis and in addition all of COTD's nominees cost of collection.

8.3 Without prejudice to any other remedies COTD may have, if at any time the Client is in breach of any obligations (including those relating to payment) COTD may suspend or terminate the supply of Goods to the Client and any of its other obligations under the Terms and Conditions. COTD will not be liable to the Client for any loss or damage the Client suffers because COTD exercised its rights under this clause.

8.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following will apply: An immediate amount shall be levied for administration fees which sum shall become immediately due and payable in addition to interest payable under clause 8.1 hereof.

8.5 In the event that:

(a) Any money payable to COTD becomes overdue or in COTD's opinion the Client will be unable to meet its payments as they fall due; or

(b) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or

(c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client then without prejudice to COTDs other remedies at law:

- i) COTD shall be entitled to review its credit terms; and
- ii) COTD shall be entitled to cancel all or any part of the order of the Client which remains unperformed in addition to and without prejudice to and other remedies; and
- iii) All amounts owing to COTD shall, whether or not due for payment, immediately become due and payable.

#### 9. TITLE (OWNERSHIP)

9.1 It is the intention of COTD and agreed by the Client that ownership of the Goods shall not pass until:

- (a) The Client has paid all amounts owing for the particular Goods; and
- (b) The Client has met all other obligations due by the Client to COTD in respect of all the contracts between COTD and the Client, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until COTD has received payment and all other obligations of the Client are met.

9.2 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from COTD to the Client COTD may give notice in writing to the Client to return the Goods or any of them to COTD. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Client fails to return the Goods to COTD then COTD or COTDs agent may enter upon and into land and premises owned or occupied or used by the Client or at any premises as the invitee of the Client to where the Goods are situated and take possession of the Goods without being responsible for any damage caused.

#### 10. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

10.1 Upon assenting to these Terms and Conditions in writing the Client acknowledges and agrees that:

- (a) These Terms and Conditions constitute a security agreement for the purpose of the PPSA; and
- (b) A security interest is taken in all Goods previously supplied by COTD to the Client and all Goods that will be supplied in the future by COTD to the Client during the continuance of the parties relationship.

10.2 The Client undertakes to:

- (a) Sign any further documents and/or provide any information. Such information to be complete and accurate and up to date in all respects which COTD may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register.
- (b) Not registering a financing charge statement or a charge demand without the prior written consent of COTD.
- (c) Give COTD not less than fourteen (14) days prior written notice of any proposed change in the Clients name and/or any other changes in the Clients details (including but not limited to change to the Clients address contact numbers or business practice); and not registering a financing charge statement or a charge demand without the prior written consent of COTD.
- (d) The Client will immediately give advice to COTD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.3 COTD and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed to in writing by COTD the Client waives its rights to receive a verification statement in accordance with section 148 of the PPSA.

#### 11. INTELLECTUAL PROPERTY

11.1 Where COTD has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in COTD, and shall only be used by the Client as COTDs discretion.

11.2 Conversely, in such a situation, where the Client has supplied drawings, the specification and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of COTD.

#### 12. CANCELLATION

12.1 COTD may cancel these Terms and Conditions or cancel delivery of the Goods at any time before the Goods are delivered by giving written notice. On giving such notice COTD shall promptly repay the Client any sums paid in respect of the price for the Goods. COTD shall not be liable for any loss or damage arising from such cancellation.

12.2 At COTDs sole discretion the Client may cancel delivery of Goods. In the event that the Client cancels delivery of Goods the Client shall be liable for any cost incurred by COTD up to the time of cancellation.

#### 13. PRIVACY ACT 1993

13.1 The Client and the Guarantors (if separate to the Client) authorises COTD to collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing any Goods provided by COTD to any other party.

13.2 The Client authorises COTD to disclose any information obtained to any person for the purpose set out in clause 13.1.

13.3 Where the Client is a natural person the authorities under (clauses 13.1 and 13.2) are authorities or consents for the purpose of the Privacy Act 1993.

#### 14. CLIENTS DISCLAIMER

14.1 The Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him to any servant or agent of COTD and the Client acknowledges that he buys the Goods relying solely on his own skill and judgement and that COTD shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacture which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.

#### 15. CONTRACTUAL LEGISLATION

15.1 The provisions within these Terms and Conditions are subject to the Contract and Commercial Law Act 2017 Part 2, Subpart 3.

#### 16. COTD'S RIGHTS TO DISPOSE OF UNPAID GOODS

16.1 In the event that:

- (a) COTD retains possession or control of the Goods; and
- (b) Payment of the Price is due to COTD; and
- (c) COTD has made demand in writing to the Client for payment of the price of Goods in terms of this contract; and
- (d) COTD has not received the Price of the Goods, then, whether the ownership in the Goods has passed to the Client or has remained with COTD, COTD may dispose of the Goods and may claim from the Client the loss to COTD on such disposal.

#### 17. LIEN

17.1 Where COTD has not received or been tendered the whole of the price, or the payment has been dishonoured, COTD shall have:

- (a) A lien on the Goods;
- (b) The right to retain them for the price while COTD is in possession of them;
- (c) A right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
- (d) A right of resale; and
- (e) The foregoing right of disposal, provided that the Lien of COTD shall continue despite the commencement of proceedings or judgment for the price having been obtained.

#### 18. CONSUMER GUARANTEES ACT 1993

18.1 This contract is subject, in all cases except where the Client is contracting within the Terms and Conditions of a trade/business (which cases are specifically excluded) to the provisions of the Consumer Guarantees Act 1993.

#### 19. GENERAL

19.1 All Goods and Services supplied by COTD are subject to the laws of New Zealand and that COTD takes no responsibility for changes in the law that affect Goods and Services supplied.

19.2 If any provision of these Terms and Conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected or prejudiced or impaired.

19.3 COTD shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by COTD of these Terms and Conditions.

19.4 In the event of any breach of this contract by COTD the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of COTD exceed the price of the Goods.

19.5 The Client shall not set off against the Price amounts due from COTD.

19.6 Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.

19.7 COTD may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.8 COTD shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Clients verbal instruction.

19.9 COTD reserves the right to review these Terms and Conditions at any time and from time to time. If following any such review there is to be any change in the Terms and Conditions that change will take effect from the date on which COTD notifies the Client of such change.

19.10 Failure by COTD to enforce any of the Terms and Conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations COTD has under this contract.