

# FUTURE PRESENCE LIMITED

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## NEW ACCOUNT/CREDIT 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: .....

Website: ..... Email: .....

Nature of Business: ..... Years in Business: .....

Telephone: ..... Fax: ..... Mobile: .....

Contact Name & Position: .....

(Please tick) Retail Store  Online only  Trade  Other (please state): .....

**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: ..... Incorporation No: .....

### FINANCIAL & PROFESSIONAL ADVISORS

Shareholders Funds: ..... Paid Up: .....

Name of Accountant: ..... Solicitor: .....

Bank: ..... Branch: ..... Acct No: .....

### TRADE REFERENCES

Company	Contact Name	Phone Number	Account open since

General Description of Products of Interest: .....

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Future Presence Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are 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/are also signing this application form in my/our personal capacity.

If the applicant is a company then this application form must be signed by a director of the company.

Signed ..... Print Name ..... Designation .....

Dated this ..... day of ..... 20.....

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Future Presence" shall mean Future Presence Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Future Presence.
- 1.3 "Products" shall mean:
  - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Future Presence to the Customer; and
  - 1.3.2 all Products supplied by Future Presence to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Future Presence; and
  - 1.3.4 all Products supplied by Future Presence and further identified in any invoice issued by Future Presence to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Products that are marked as having been supplied by Future Presence or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Future Presence; and
  - 1.3.6 all of the Customer's present and after-acquired Products that Future Presence has performed work on or to or in which products or materials supplied or financed by Future Presence have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products" shall also mean all products, services and advice provided by Future Presence to the Customer and shall include without limitation the importation, wholesale distributor of house wares and other products and all charges for labour, hire charges, insurance charges, freight costs, or any fee or charge associated with the supply of Products by Future Presence to the Customer.
- 1.5 "Price" shall mean the cost of the Products as agreed between Future Presence and the Customer and includes all disbursements eg charges Future Presence pay to others on the Customer's behalf subject to clause 5 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Future Presence from the Customer for the supply of Products 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 Future Presence to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products provided by Future Presence to any other party.
- 3.2 The Customer authorises Future Presence 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. INTERNET / WEBSITE RETAIL

- 4.1 The supply of product to the Customer for resale on the Internet is at the absolute discretion of Future Presence and may be discontinued at any time.
- 4.2 Customers shall disclose to Future Presence details of all websites from which products are sold from time to time for approval by Future Presence.
- 4.3 Customers shall not sell, offer for sale or otherwise advertise the product on any NZ or overseas trading or auction website or any other website which Future Presence considers detrimental to its distribution network.
- 4.4 It is prohibited to reproduce any promotional materials, by any means, without the prior written consent of Future Presence.

## 5. PRICE

- 5.1 Where no price is stated in writing or agreed to orally the Products shall be deemed to be sold at the current amount as such Products are sold by Future Presence at the time of the contract.
- 5.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Future Presence between the date of the contract and delivery of the Products.

## 6. PAYMENT

- 6.1 Unless otherwise agreed payment for Products and services shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 6.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 6.3 Any expenses, disbursements and legal costs incurred by Future Presence in the enforcement of any rights contained in this contract shall be paid by the Customer, including any actual solicitor's fees or debt collection agency fees.
- 6.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 6.5 A deposit may be required.

## 7. QUOTATION

- 7.1 Where a quotation is given by Future Presence for Products:
  - 7.1.1 Unless otherwise agreed the quotation shall be valid for seven (7) days from the date of issue; and
  - 7.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 7.1.3 Future Presence reserves the right to alter the quotation because of circumstances beyond its control.
- 7.2 Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

## 8. RISK

- 8.1 The Products remain at Future Presence's risk until delivery to the Customer.
- 8.2 Delivery of Products shall be deemed complete when Future Presence gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products supplied by Future Presence passes to the Customer only when the Customer has made payment in full for all Products provided by Future Presence and of all other sums due to Future Presence by the Customer on any account whatsoever. Until all sums due to Future

Presence by the Customer have been paid in full, Future Presence has a security interest in all Products.

- 9.2 If the Products 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 Products shall remain with Future Presence until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Future Presence as security for the full satisfaction by the Customer of the full amount owing between Future Presence and Customer.
- 9.3 The Customer gives irrevocable authority to Future Presence to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Future Presence believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Future Presence 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. Future Presence may either resell any repossessed Products 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 Products and credit the Customer's account with the invoice value thereof less such sum as Future Presence reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Products are retained by Future Presence pursuant to clause 9.3 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.
- 9.5 The following shall constitute defaults by the Customer:
  - 9.5.1 Non payment of any sum by the due date.
  - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 9.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
  - 9.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Future Presence remains unpaid.
  - 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
  - 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 9.5.7 Any material adverse change in the financial position of the Customer.

## 10. PAYMENT ALLOCATION

- 10.1 Future Presence may in its discretion allocate any payment received from the Customer towards any invoice that Future Presence 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 Future Presence, payment shall be deemed to be allocated in such manner as preserves the maximum value of Future Presence's purchase money security interest in the Products.

## 11. DISPUTES

- 11.1 No claim relating to Products will be considered unless made in writing within seven (7) days of delivery.

## 12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Future Presence 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 Future Presence, Future Presence's 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.
- 12.2 Except as otherwise provided by clause 12.1 Future Presence shall not be liable for:
  - 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products by Future Presence to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products provided by Future Presence to the Customer; and
  - 12.2.2 The Customer shall indemnify Future Presence 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 Future Presence or otherwise, brought by any person in connection with any matter, act, omission, or error by Future Presence its agents or employees in connection with the Products.

## 13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from Future Presence for the purposes of a business in terms of section 2 and 43 of that Act.

## 14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Future Presence agreeing to supply Products and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Future Presence the payment of any and all monies now or hereafter owed by the Customer to Future Presence and indemnify Future Presence against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 15. MISCELLANEOUS

- 15.1 Future Presence 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 Failure by Future Presence 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 Future Presence has under this contract.
- 15.3 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.
- 15.4 The Law of New Zealand shall apply to this contract.