

Where pride shows

MOANA

clothing

30 Tauhinu Road, PO Box 15-175, Miramar, Wellington, New Zealand
service@moanaclothing.co.nz P: +64 4 380 8881 www.moanaclothing.co.nz

Credit Account Application Form

Company Details:

Full Legal Name (i.e. not trading name):("the Client")

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

Trading as:

Postal Address:

Physical Address:

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

Telephone:

Sales Contact Name & Email:

Accounts Contact Name & Email:

Ownership: please insert Owner(s) / Directors Name(s) in full

1:..... Address:

2:..... Address:

3:..... Address:

If a limited liability company - Address of Registered Office:

Date of Incorporation: Incorporation No:

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 Moana Clothing 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 Client. 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.

Signed:

Print Name:

Title:

Date:

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

Terms and Conditions of Trade

1. DEFINITIONS

- 1.1 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing Goods from Moana Clothing .
- 1.2 "Goods" shall mean:
 - 1.2.1 all Goods supplied by Moana Clothing to the Client; and
 - 1.2.2 all inventory of the Client that is supplied by Moana Clothing; and
 - 1.2.3 all Goods supplied by Moana Clothing and further identified in any invoice issued by Moana Clothing to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.2.4 all Goods that are marked as having been supplied by Moana Clothing or that are stored by the Client in a manner that enables them to be identified as having been supplied by Moana Clothing; and
 - 1.2.5 all of the Client's present and after-acquired Goods that Moana Clothing has performed work on or to or in which goods or materials supplied or financed by Moana Clothing have been attached or incorporated.
 - 1.2.6 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.3 "Price" shall mean the cost of the Goods as agreed between Moana Clothing and the Client and includes all disbursements e.g. charges Moana Clothing pays to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Moana Clothing from the Client 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 Client authorises Moana Clothing to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Moana Clothing to any other party.
- 3.2 The Client authorises Moana Clothing to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client 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 Moana Clothing 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 Moana Clothing between the date of the contract and delivery of the Goods.

5. PAYMENT

- 5.1 Payment for Goods shall be made in full and received into Moana Clothing's bank account 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 Moana Clothing in the enforcement of any rights contained in this contract shall be paid by the Client, 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.

6. QUOTATION

- 6.1 Where a quotation is given by Moana Clothing for Goods:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for twenty-one (21) 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;
 - 6.1.3 Moana Clothing reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods.

7. AGENCY

- 7.1 The Client authorises Moana Clothing to contract either as principal or agent for the provision of Goods that are the matter of this contract.
- 7.2 Where Moana Clothing enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

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

- 8.1 Title in any Goods supplied by Moana Clothing passes to the Client only when the Client has made payment in full for all Goods provided by Moana Clothing and of all other sums due to Moana Clothing by the Client on any account whatsoever. Until all sums due to Moana Clothing by the Client have been paid in full, Moana Clothing has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods shall remain with Moana Clothing until the Client 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 Moana Clothing as security for the full satisfaction by the Client of the full amount owing between Moana Clothing and Client.
- 8.3 The Client gives irrevocable authority to Moana Clothing to enter any premises occupied by the Client or on which Goods are situated at any reasonable time after

default by the Client or before default if Moana Clothing 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. Moana Clothing shall not be liable for any costs, damages, expenses or losses incurred by the Client 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. Moana Clothing may either resell any repossessed Goods and credit the Client'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 Client's account with the invoice value thereof less such sum as Moana Clothing reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 8.4 Where Goods are retained by Moana Clothing pursuant to clause 8.3 the Client 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 Client:
 - 8.5.1 Non-payment of any sum by the due date.
 - 8.5.2 The Client 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 Client or any other creditor intimates that it intends to seize Goods.
 - 8.5.4 Any Goods in the possession of the Client are materially damaged while any sum due from the Client to Moana Clothing remains unpaid.
 - 8.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
 - 8.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Client.
- 8.6 If the Credit Repossession Act applies to any transaction between the Client and Moana Clothing, the Client has the rights provided in that Act despite anything contained in these terms and conditions of trade.

9. DISPUTES

- 9.1 No claim relating to Goods will be considered unless made within seven (7) days of supply.

10. LIABILITY

- 10.1 The Consumer Guarantees Act 1993, the Fair-Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Moana Clothing 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 Moana Clothing, Moana Clothing'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.
- 10.2 Except as otherwise provided by clause 10.1 Moana Clothing shall not be liable for:
 - 10.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by Moana Clothing to the Client, including consequential loss whether suffered or incurred by the Client 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 Goods provided by Moana Clothing to the Client; and
 - 10.2.2 The Client shall indemnify Moana Clothing 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 Moana Clothing or otherwise, brought by any person in connection with any matter, act, omission, or error by Moana Clothing its agents or employees in connection with the Goods.
 - 10.2.3 If contrary to the disclaimer of liability contained in these terms and conditions of trade Moana Clothing is deemed liable to the Client, following and arising from the supply of Goods by Moana Clothing to the Client, then such liability is limited in its aggregate to \$500.

11. CONSUMER GUARANTEES ACT

- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods from Moana Clothing for the purposes of a business in terms of section 2 and 43 of that Act.

12. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

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

13. MISCELLANEOUS

- 13.1 Moana Clothing shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 13.2 Failure by Moana Clothing 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 Moana Clothing has under this contract.
- 13.3 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.