

CREDIT ACCOUNT APPLICATION



FOR OFFICE USE ONLY

Trade Reference Responses:

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FORM ISSUED BY:

Approved/Declined By: Date: A/C Code:

Letter of Confirmation Sent: Yes/No

D/S Code: Industry Code: Rep Code:

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf.

DATE: REF No.

CUSTOMER'S TRADE NAME:

CUSTOMER'S FULL or LEGAL NAME:

TYPE OF BUSINESS:

Phone: Fax:

Mobile: Email:

Billing Address: Physical Address:

.....

..... Postcode: Postcode:

COMMERCIAL CUSTOMERS ONLY

Company Number:

Requested Credit Limit: Date Established:

Contact 1: Contact 2:

Position: Position:

Phone: Phone:

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: Full Name:

Home Address: Home Address:

..... Postcode: Postcode:

Home Phone: Home Phone:

TRADE REFERENCES

Business Name 1: Business Name 2:

Address or A/C No: Address or A/C No:

Phone: Phone:

Fax: Fax:

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of Linkup Paints (BOP) Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (LINKUP): SIGNED (CUSTOMER):

Name: Name:

Position: Position:

Drivers Licence #: DOB:

WITNESS TO CUSTOMERS SIGNATURE:

Drivers Licence 5b #:

Signed: Name: Date:



Personal/Director's Guarantee and Indemnity

IN CONSIDERATION of Linkup Paints (BOP) Limited and its successors and assigns ("Linkup") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

[] ("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to Linkup of all moneys which are now owing to Linkup by the Customer and all further sums of money from time to time owing to Linkup by the Customer in respect of goods and services supplied or to be supplied by Linkup to the Customer or any other liability of the Customer to Linkup, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Linkup. If for any reason the Customer does not pay any amount owing to Linkup the Guarantor will immediately on demand pay the relevant amount to Linkup.
- HOLD HARMLESS AND INDEMNIFY** Linkup on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by or assessed against Linkup in connection with:
 - the supply of goods and/or services to the Customer; or
 - the recovery of moneys owing to Linkup by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Linkup's nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
 - moneys paid by Linkup with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Linkup, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Linkup to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to Linkup by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Linkup's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to Linkup, each Guarantor shall be a principal debtor and liable to Linkup accordingly.
- If any payment received or recovered by Linkup is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Linkup shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to Linkup.**
- I/we irrevocably authorise Linkup to obtain from any person or company any information which Linkup may require for credit reference purposes. I/We further irrevocably authorise Linkup to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Linkup as a result of this Guarantee and Indemnity being actioned by Linkup.
- The above information is to be used by Linkup for all purposes in connection with Linkup considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

PRESENT ADDRESS: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____ OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

PRESENT ADDRESS: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____ OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member.

Linkup Paints (BOP) Limited – Terms & Conditions of Trade

- Definitions**
 - "Linkup" shall mean Linkup Paints (BOP) Limited its successors and assigns or any person acting on behalf of and with the authority of Linkup Paints (BOP) Limited.
 - "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Linkup to the Customer.
 - "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - "Goods" shall mean all Goods supplied by Linkup to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Linkup to the Customer.
 - "Services" shall mean all services supplied by Linkup to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - "Price" shall mean the price payable for the Goods as agreed between Linkup and the Customer in accordance with clause 3 of this contract.
- Acceptance**
 - Any instructions received by Linkup from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Linkup shall constitute acceptance of the terms and conditions contained herein.
 - Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Linkup.
 - The Customer shall give Linkup not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Linkup as a result of the Customer's failure to comply with this clause.
 - Goods are supplied by Linkup only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
 - All orders accepted by linkup are subject to ability to supply and to price ruling at the time of delivery.
- Price And Payment**
 - At Linkup's sole discretion the Price shall be either:
 - as indicated on invoices provided by Linkup to the Customer in respect of Goods supplied; or
 - Linkup's quoted Price (subject to clause 3.2) which shall be binding upon Linkup provided that the Customer shall accept Linkup's quotation in writing within thirty (30) days.
 - Linkup reserves the right to change the Price in the event of a variation to Linkup's quotation.
 - At Linkup's sole discretion a non refundable deposit may be required.
 - At Linkup's sole discretion:
 - payment shall be due before delivery of the Goods; or
 - payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
 - Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Linkup.
 - GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- Delivery Of Goods**
 - At Linkup's sole discretion delivery of the Goods shall take place when:
 - the Customer takes possession of the Goods at Linkup's address; or
 - the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Linkup or Linkup's nominated carrier); or
 - the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
 - At Linkup's sole discretion the costs of delivery are in addition to the Price.
 - The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Linkup shall be entitled to charge a reasonable fee for redelivery.
 - Linkup may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - The failure of Linkup to deliver shall not entitle either party to treat this contract as repudiated.
 - Linkup shall not be liable for any loss or damage whatsoever due to failure by Linkup to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Linkup.
- Risk**
 - If Linkup retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Linkup is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Linkup is sufficient evidence of Linkup's rights to receive the insurance proceeds without the need for any person dealing with Linkup to make further enquiries.
 - All paint mixed by Linkup is done with as much care and accuracy as possible. It is the Customer's responsibility to check colour accuracy before application.
 - The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Linkup will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- Title**
 - Linkup and Customer agree that ownership of the Goods shall not pass until:
 - the Customer has paid Linkup all amounts owing for the particular Goods; and
 - the Customer has met all other obligations due by the Customer to Linkup in respect of all contracts between Linkup and the Customer.
 - Receipt by Linkup of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Linkup's ownership or rights in respect of the Goods shall continue.
 - It is further agreed that:
 - where practicable the Goods shall be kept separate and identifiable until Linkup shall have received payment and all other obligations of the Customer are met; and
 - until such time as ownership of the Goods shall pass from Linkup to the Customer Linkup may give notice in writing to the Customer to return the Goods or any of them to Linkup. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - the Customer is only a bailee of the Goods and until such time as Linkup has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Linkup for the Goods, on trust for Linkup; and
 - until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Linkup will be the owner of the end products; and
 - if the Customer fails to return the Goods to Linkup then Linkup or Linkup's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and Linkup will not be liable for any reasonable loss or damage suffered as a result of any action by Linkup under this clause.
- Personal Property Securities Act 1999 ("PPSA")**
 - Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Goods previously supplied by Linkup to the Customer (if any) and all Goods that will be supplied in the future by Linkup to the Customer.
 - The Customer undertakes to:
 - sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Linkup may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, Linkup for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - not register a financing change statement or a change demand without the prior written consent of Linkup; and
 - immediately advise Linkup 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.
 - Linkup and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- Unless otherwise agreed to in writing by Linkup, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- The Customer shall unconditionally ratify any actions taken by Linkup under clauses 7.1 to 7.5.
- Defects**
 - The Customer shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) and before mixing and/or application of the paint, notify Linkup of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Linkup an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Linkup has agreed in writing that the Customer is entitled to reject, Linkup's liability is limited to either (at Linkup's discretion) replacing the Goods or repairing the Goods.
 - Goods will not be accepted for return other than in accordance with 8.1 above.
- Returns**
 - Returns will only be accepted provided that:
 - the Customer has complied with the provisions of clause 8.1; and
 - Linkup has agreed in writing to accept the return of the Goods; and
 - the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - Linkup will not be liable for Goods which have not been stored or 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.
 - Linkup may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight (up to a maximum of fifteen dollars (\$15) per item).
- Warranty**
 - For Goods not manufactured by Linkup, the warranty shall be the current warranty provided by the manufacturer of the Goods. Linkup 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.
 - To the extent permitted by statute, no warranty is given by Linkup as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Linkup shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- Consumer Guarantees Act 1993**
 - If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Linkup to the Customer.
- Default & Consequences Of Default**
 - Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Linkup's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Linkup.
 - If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Linkup from and against all costs and disbursements incurred by Linkup in pursuing the debt including legal costs on a solicitor and own client basis and Linkup's collection agency costs.
 - Without prejudice to any other remedies Linkup may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Linkup may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Linkup will not be liable to the Customer for any loss or damage the Customer suffers because Linkup has exercised its rights under this clause.
 - Without prejudice to Linkup's other remedies at law Linkup shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Linkup shall, whether or not due for payment, become immediately payable in the event that:
 - any money payable to Linkup becomes overdue, or in Linkup's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- Security And Charge**
 - Despite anything to the contrary contained herein or any other rights which Linkup may have howsoever:
 - where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Linkup or Linkup's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Linkup (or Linkup's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - should Linkup elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Linkup from and against all Linkup's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Linkup or Linkup's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- Cancellation**
 - Linkup may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Linkup shall repay to the Customer any sums paid in respect of the Price. Linkup shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Linkup (including, but not limited to, any loss of profits) up to the time of cancellation.
 - Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- Privacy Act 1993**
 - The Customer and the Guarantor/s (if separate to the Customer) authorises Linkup to:
 - collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - disclose information about the Customer and/or Guarantors, whether collected by Linkup from the Customer and/or Guarantors directly or obtained by Linkup from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
 - Where the Customer and/or Guarantors are an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - The Customer and/or Guarantors shall have the right to request Linkup for a copy of the information about the Customer and/or Guarantors retained by Linkup and the right to request Linkup to correct any incorrect information about the Customer and/or Guarantors held by Linkup.
- General**
 - If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
 - Linkup shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Linkup of these terms and conditions.
 - In the event of any breach of this contract by Linkup the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Linkup nor to withhold payment of any invoice because part of that invoice is in dispute.
 - Linkup may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - Linkup reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Linkup notifies the Customer of such change.
 - The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
 - Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - The failure by Linkup to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Linkup's right to subsequently enforce that provision.