33 Ha Crescent, Wiri, Auckland 2104
P.O Box 97948, Manukau City, Auckland 2241
Telephone 09 25000 90 • Warehouse/Orders 09 25000 95
Email: accounts@raj.co.nz Web: www.raj.co.nz

APPLICATION FOR CREDIT/ACCOUNT

APPLICANT TRADING NAME:

POSTAL ADDRESS: **POST CODE**

DELIVERY ADDRESS:

TELEPHONE: **EMAIL:**

EMAIL ADDRESS FOR COPIES OF INVOICES AND STATEMENTS:

☐ **I want to receive industry specials** **Email address for receiving industry specials:**

ACCOUNTS CONTACT: **PURCHASING OFFICER:**

NATURE OF BUSINESS :

LEGAL NAME OF APPLICANT:

◯ **SOLE TRADING** ◯ **PARTNERSHIP** ◯ **LIMITED PARTNERSHIP** ◯ **COMPANY** ◯ **TRUST** ◯ **OTHER**

IF OTHER, PLEASE SPECIFY:

IF A LIMITED PARTNERSHIP OR COMPANY DATE OF REGISTRATION/INCORPORATION AND REGISTRATION/ INCORPORATION NUMBER: **DATE:**

NAME & ADDRESSES OF SOLE TRADER, TRUSTEE, PARTNERS OR DIRECTORS (ALL PARTNERS OR DIRECTORS REQUIRED):

SURNAME	GIVEN NAMES	ADDRESS

TRADE REFERENCES (IF OUTSIDE OF AUCKLAND, PLEASE SUPPLY ADDRESSES)

	COMPANY NAME	CONTACT NAME	PHONE NO	EMAIL ADDRESS
1.				
	Address:			
2.				
	Address:			
3.				
	Address:			

NB: NZIG, PETROL ACCOUNTS, REPCO AND FARMERS TRADING WILL NOT GIVE REFERENCES.

I/We irrevocably authorise any person or company to provide R. A. JOHNSTONE & COMPANY LIMITED (RAJ) with information as they may require in response to credit enquiries on behalf of the Applicant. I/We hereby make application for a credit account to be opened in the above name of the Applicant and irrevocably authorise any person to provide RAJ with such information as they may require which satisfies their credit enquiries.

I/We warrant that the foregoing information is correct to the best of my/our knowledge, and that I/We have read, understood and agree to be bound by the RAJ Terms and Conditions of Trade (Terms or this Contract) as set out attached and as updated on its website. Upon signing this credit/account application I/We also understand and accept that the Terms will govern every order or confirmation of quotation that I/We enter into with RAJ for the purchase or lease of Goods or Services and that the Applicant grants a security interest in all Goods for unpaid amounts in accordance with these Terms. I/We warrant to RAJ that I/We are authorised to enter into this contract on behalf of the Applicant. I/We agree to advise RAJ of any ownership changes in respect of the Applicant.

Credit will only be provided to Applicants who are in trade. Accordingly, any such credit is not a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003.

SIGNATURE Please print and sign **POSITION / TITLE**

(PLEASE PRINT NAME) **DATE**

OFFICE USE ONLY: APPROVED by **CREDIT LIMIT** **A/C NO:**

DATE OPENED: **REP CODE:** **TERRITORY:** **CLASSIFICATION**

APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These Terms and Conditions of Trade ("Terms") between **R. A. JOHNSTONE & COMPANY LIMITED** ("RAJ") and the Customer (the "Customer") shall apply to all orders including but not limited to machinery, equipment, parts and accessories, auto care products, panel beating, spray painting products and display stands ("Goods") and technical advice and labour for technical workmanship and repair ("Services") provided by RAJ.

These terms and conditions shall prevail and take precedence over any other document or oral communication between the parties. Where RAJ fails to enforce any terms or conditions under this Contract RAJ will not be deemed to have waived any rights with respect to any such term, condition or right.

RAJ retains title in all Goods supplied while any amounts payable by the Customer under these Terms are unpaid. The parties agree that such interest constitutes a security interest for the purposes of the Personal Property Securities Act 1999 (**"**PPSA**"**) in all Goods supplied by RAJ and their proceeds (also referred to as "Collateral") which secures any outstanding amounts payable to RAJ including any interest, fees, debt collection costs, legal fees, costs incurred as a result of suspension and re-commencement of supply and any other applicable charges. The Customer acknowledges and agrees that the security interest granted under these Terms is a "purchase money security interest" for the purposes of the PPSA.

The security interest arising under this clause attaches to the Goods when the Goods are collected or dispatched from RAJ's premises and not at any later time.

On the request of RAJ, the Customer shall promptly execute any document and do anything else required by RAJ to ensure that the security interest created under these Terms constitutes a first ranking perfected security interest over the Collateral including providing any information that RAJ reasonably requires to complete a financing statement or a financing change statement under the PPSA.

The Customer waives any right to receive a copy of a verification statement under the PPSA.

The Customer will pay to RAJ all costs, expenses and other charges incurred, expended or payable by RAJ in relation to the filing of a financing statement or a financing change statement in connection with these Terms. The security interest referred to above shall also secure all such costs, expenses and other charges.

RAJ and the Customer also agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms.

The Customer acknowledges that these Terms constitute a Security Agreement as defined by the PPSA. For the purposes of the PPSA, Collateral shall include all and any Goods supplied by RAJ and the proceeds from the sale of all Goods. The Customer shall also agree not to allow any person to register a financing statement over any of the Collateral secured by this Security Agreement without the prior written consent of RAJ. This Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by RAJ. The security interest granted in the Collateral has the same priority in relation to any and all of the Goods supplied to the Customer at any time.

- **Price**

RAJ shall publish a list of its Goods and if price is not listed with the Goods the price of Goods and Services shall be the prevailing price listed in its website at the time. **www.raj.co.nz**

RAJ may also confirm the price of Goods as a quotation and the Customer shall confirm acceptance by providing an order to RAJ or signing the RAJ quotation or sending an electronic confirmation to RAJ.

Quotations for Goods shall be valid for thirty (30) days from the date of publication but no quotation will constitute an offer unless signed on behalf of RAJ. RAJ may withdraw any quotation before receiving the Customer's signed acceptance.

The price may be increased if the Customer varies or alters its requirements for the Goods or Services. Without limitation, variations and alterations may result from changes to instructions from the Customer requiring a changed basis for the cost of Goods or Services OR additional parts, materials or Services. Any variations regarding price or supply to that agreed in the order during the period of supply shall be confirmed in writing by RAJ and take precedence over that part of the order so affected.

- **No cancellation for Make to Order Goods**

Upon acceptance of a Customer, any order to RAJ for Goods or Services that are designed or procured specifically for the Customer (meaning non standard or indented to order) cannot be cancelled without the Customer paying the full cost of the manufacture or procurement of the Goods or Services and any other costs incurred by RAJ up until to the time of cancellation.

- **Payment**

Payment shall be made according to the terms stated by RAJ in its quotation or invoice which shall be cash, credit card, debit card or electronic funds transfer being:

(a) full payment upon delivery, OR
(b) agreed progress payments, OR
(c) full payment by the 20th of the month following the date of the invoice

The Customer agrees to make payment of all amounts due to RAJ as set out in the invoice without any delay or deduction whether by way of set-off or counterclaim even if they dispute the invoice.

The Customer agrees that RAJ has sole discretion to apply or set-off payments made by the Customer against any amounts owing in respect of other transactions or RAJ invoices notwithstanding that the Customer may have tendered the payment for a particular transaction or invoice.

- **Interest for Late Payment**

RAJ may charge the Customer interest on any monies outstanding under this Contract which shall be calculated on a daily basis at a rate equal to 5% above RAJ's applicable bank indicator lending or overdraft rate. Interest is payable from the date payment was due until the date RAJ receives payment. RAJ's right to charge interest is without prejudice to RAJ's other rights or remedies for the Customer's default in failing to pay on the due date.

- **Suspension of Contract for Non Payment**

If at any time RAJ acting reasonably considers the credit of the Customer to be unsatisfactory, it will require the Customer to provide at the Customer's cost, security for payment and/or RAJ may suspend performance of its obligations including suspension of the supply of Goods or Services under this Contract.

- **Delivery**

Delivery by RAJ to a carrier normally used by RAJ shall constitute delivery of Goods to the Customer and the Customer shall accept risk in the Goods once the Goods are in the care of the carrier and the Customer agrees that RAJ shall not be liable for damage caused by the carrier. Completion of repair or servicing of the Goods shall constitute delivery of Services.

Delivery by RAJ to the premises of the Customer shall also constitute delivery and the Customer agrees that risk in the Goods shall pass to the Customer once the Goods are delivered. The Customer also agrees that RAJ shall not be responsible for checking the authority of the person accepting the Goods on behalf of the Customer at the time of delivery.

Delivery of Goods when RAJ advises the Customer that Goods are ready for delivery will also constitute delivery.

Goods or Services that are finished items but only part of an order may be delivered by instalments at RAJ's discretion and in such case each delivery will be regarded as a separate contract and any Goods or Services delivered shall be paid by the Customer in accordance with the terms of payment for each such delivery.

Where RAJ has performed part or all of the supply of Goods or Services at a time agreed in the order but where delivery is delayed or returned because of any act, omission or delay by the Customer RAJ will require the Customer to pay that portion of the contract price which represents the costs incurred by RAJ in carrying out supply and RAJ may also charge stand by costs while the Customer renders their site ready prior to completing delivery.

RAJ will make every effort to ensure delivery of Goods and Services on time but will not be liable for any loss or damage (including any consequential or indirect loss or damage) to the Customer arising from any delays in delivery.

- **Risk, Ownership and Title**

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time of delivery of the Goods under these Terms and the Customer shall properly insure the Goods from theft, fire or loss damage from such time. Where the Customer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Customer agrees to pay RAJ the full price payable for the Goods.

The Customer agrees that RAJ has legal and equitable right to title in all and any Goods supplied that remain unpaid and ownership shall only pass to the Customer when all amounts payable under these Terms are paid. The Customer is hereby authorised to use the Goods in the ordinary course of business as fiduciary agent and bailee of RAJ until the Customer pays RAJ in full without deduction or setoff. For as long as ownership in the Goods is retained by RAJ the Customer may use the Goods only in such a way that they are identifiable as the property of RAJ.

Leased goods shall be returned to RAJ in their original condition (fair wear and tear accepted) when the term of the lease ends.

If the Goods including the value of Services, the subject of this Contract, have become the constituent of mixed with or attached to any other goods or property of the Customer, then a proportion of the value of those goods or property to the value of RAJ's Goods or value of Services shall belong to RAJ.

Where the Goods or Services remain unpaid or, for leased goods, the term of the lease has ended the Customer hereby irrevocably gives RAJ, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours, to search for, inspect and remove any of the Goods supplied in which RAJ has retained ownership.

The Customer will not hold RAJ responsible for any economic or consequential loss that the Customer may suffer as a result of the Goods being removed or dismantled from the property of the Customer.

RAJ may resell possessed Goods and credit the Customer with the proceeds of sale (less depreciation, wear and tear) and the Customer will still be liable for any outstanding monies.

- **Title upon Sale of the Goods to a Third Party**

Notwithstanding that property in the Goods is retained by RAJ, the Customer is hereby authorised to use or sell the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of RAJ until the Customer pays RAJ in full without deduction or setoff provided that such authority may be revoked by written notice at any time if RAJ deems the credit of the Customer to be unsatisfactory or if the Customer is in default of its obligations under the contract or any other contract between RAJ and the Customer. This clause is without prejudice to RAJ's rights under sections 82 to 86 of the PPSA.

Where any Goods in respect of which title has not passed to the Customer are sold by the Customer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Customer shall be held upon trust by the Customer for RAJ. Proceeds of sale so received by the Customer shall be held as a separate fund in trust for RAJ and shall first be applied towards the satisfaction of all indebtedness of the Customer to RAJ.

- **Company Warranty & Liability**

RAJ's liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty manufacture, from damage proven to occur before delivery by RAJ or defective Services. No other warranty that goods are reasonably fit for purpose or otherwise suitable is provided nor can be implied from the conduct of RAJ's officers and employees. If the Customer uses the Goods for other purposes than that specified by RAJ in its publications, Material Safety Data Sheet ("MSDS") or packaging the Customer agrees to be responsible for the fitness and performance of the Goods for the purposes required by the Customer. Without limitation, RAJ shall not be responsible and the warranty will not apply to Goods where the Customer fails to ascertain the correctness of the Goods for purposes intended by the Customer.

The period for the above defect warranty on Goods or Services shall be limited to six (6) months from the date of delivery by RAJ TO THE CUSTOMER for business to business sales and twelve (12) months from the date of delivery by THE CUSTOMER TO THE CONSUMER for business to consumer sales.

Where RAJ accepts liability for damage or defect under its warranty and elects to repair or replace Goods or Services it shall repair or replace the Goods to their original condition and replace Services but where this cannot be done RAJ will refund the purchase price in full.

RAJ shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of RAJ's obligations arising under or in connection with this Contract including delays in the delivery of Goods or Services, from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of RAJ, its servants, agents or contractors.

RAJ shall not be liable for any breach or failure to perform any of its obligations under this Contract where such breach or failure is caused directly or indirectly by war, civil commotion, hostilities, strike or lockout, act of God, fire, pandemic, governmental regulations or directions, or any other cause force majeure beyond RAJ's reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of the contract.

- **Consumer Guarantees Act 1993**

As RAJ's business is a trade supply business, unless the Customer advises otherwise prior to making an order, RAJ will consider that the Customer has held out as acquiring any Goods or Services for the purpose of (i) resupplying them in trade, (ii) consuming them in the course of a process of production or manufacture, or (iii) using the Goods in trade to repair or treat other goods or fixtures.

The Customer acknowledges that if it is in trade any Goods and Services have been supplied and acquired in trade and that they and RAJ are each respectively in trade and that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to this Contract.

Despite any other clause in these Terms, if the Customer is not in trade and is a consumer (as defined in the CGA), nothing in these Terms will affect their rights as a consumer under the CGA.

- **Fair Trading Act 1986**

If the Customer is in trade as determined by the above clause, RAJ and the Customer agree pursuant to section 5D(1) of the Fair Trading Act 1986 ("FTA") that both parties are in trade and sections 9, 12A and 13 of the FTA do not apply to these Terms.

- **Claims for Defective Goods or Services, Discrepancies and Shortages**

RAJ may, at its discretion, repair or replace any damaged or defective Goods or Services provided that the Customer advises RAJ of the claim within fourteen

(14) days of the defect occurring together with a claim specifically identifying the damage or defect(s); and provided that the Customer does not continue to use the Goods once the defect is known. Discrepancies and shortages of parts must be notified to RAJ with fourteen (14) days of delivery.

- **When Claims will not be considered**

RAJ's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Customer agrees that RAJ will not consider claims from the Customer in respect of Goods where:

(a) the Goods have not been paid in full and according to the terms of payment.

(b) the defect is due to or resulting from damage from misuse or use contrary to the written instructions of the Company for maintenance of care while in the possession of the Customer.

Common misuse is:

- not stocking the Goods in accordance RAJ instructions or instructions on the packaging or label.
- the Goods are used for purposes other than for the description of use.
- the Goods are subject to impact or heavy loads during stocking.

(c) the defect or failure is caused by the Customer or a third party on behalf of the Customer attempting altering or mixing of the Goods with other goods.

(d) the defect or failure is due to environmental conditions of the Customer's site causing deterioration.

If the Customer does not comply with the above requirements for warranty and claims the Customer will be deemed to have accepted the Goods and RAJ will not incur any liability whatsoever in relation to the Goods.

- **Claims for Goods Incorrectly Ordered**

RAJ reserves the right to allow claims for Goods that are incorrectly ordered by the Customer (provided that they are not made to order) by retaining fifteen per cent (15%) of the invoice price plus freight costs as an administrative charge and handling fee.

Claims for Goods incorrectly ordered will not be recognised by RAJ unless the Goods are in original condition and unless the Customer advises RAJ within seven (7) days of delivery.

- **Consigned Goods**

The Customer agrees that Goods supplied on consignment by RAJ will be under the risk of the Customer meaning under the care and responsibility of the Customer but shall always remain the property of RAJ and will be used only for purposes agreed by RAJ and will not be loaned to any third party. Goods must be kept in their original state as supplied and not re-assembled or parts changed or added or mixed with property of the Customer. The Customer further agrees to pay RAJ for any loss or damage to consigned Goods while under the care of the Customer. The Customer agrees that Display stands and display boards, product storage equipment, cabinets etc, dispensers and equipment to apply RAJ products provided by RAJ are for RAJ supplied Goods only and shall not be used for any other purposes whatsoever.

- **Grounds for Termination by RAJ**

RAJ immediately on written notice to the Customer may terminate this Contract if the Customer is overdue in making payments or otherwise in default under these Terms for any reason whatsoever.

Upon the termination of this Contract for any reason, all rights of the Customer granted by this Contract shall terminate. Termination of this Contract shall not relieve the Customer of its obligations to pay all monies owed by it to RAJ on any account whatsoever, which monies shall be payable immediately notwithstanding that the date for payment of the monies may not have arrived. Termination of this Contract shall not relieve the Customer from liability arising from any antecedent breach of the terms and conditions of this Contract.

- **Privacy Act 2020**

The Customer authorises RAJ to collect, retain and use any information about the Customer for the purposes of assessing the Customer's creditworthiness, providing any Goods and Services or for marketing RAJ or its related companies' services.

The Customer authorises RAJ to disclose any information obtained to any person for the above purposes, including without limitation to any credit reporting agencies.

The Customer acknowledges that RAJ and its related companies may collect and use information about the Customer provided by third parties (including without limitation credit reporting agencies) for credit purposes. The Customer has the right to access and request correction of any such information.

- **Indemnity**

The Customer fully indemnifies RAJ and its related companies against all losses, costs, claims and expenses arising from the Customer's negligence or from the Customer's breach of any of these Terms or any other terms and requirements connected with the provision of any Goods or Services.

- **Dispute and Arbitration**

In the event of any dispute between RAJ and the Customer arising out of this Contract, the Customer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and heard in Auckland and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

Upon signing the RAJ Credit Application OR providing an order to RAJ the Customer agrees that these Terms and Conditions of Trade may be superseded by revised terms and conditions dated and posted to the RAJ website which shall apply in substitution for these Terms and Conditions of Trade.