

Beau Ideal Ltd
P O Box 8057
87 Kahikatea Drive
Hamilton 3206

APPLICATION TO OPEN CREDIT ACCOUNT BEAU IDEAL LIMITED (SELLER)

Date: _____

Buyer/Company/Trust Name: _____ ("the Buyer")

GST No: _____

Type of business Sole Trader Partnership Ltd Company Trustee Company
(Tick the appropriate box)

I am a GSB member. Please link me to GSB pricing

Trading Name: _____

Trading Address: _____

Postal Address: _____

Telephone No: _____ Fax No: _____

Email (sales): _____ Email (accounts): _____

Number of Years Trading: _____ Paid up Capital \$: _____

Monthly Purchases: _____

Bank Name: _____ Branch: _____ Account No: _____

I/We have read, understood and agree to be bound by the Seller's Terms and Conditions of Sale as printed overleaf or attached. I/We warrant to the Seller 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 Buyer.

Buyer/Trustee/Director's Name: _____

Signature: _____

Address: _____

Phone Number: _____

Buyer/Trustee/Director's Name: _____

Signature: _____

Address: _____

Phone Number: _____

Personal Guarantee of Buyers Obligations

In consideration of the Seller agreeing to supply Goods to the Buyer I/we jointly and severally GUARANTEE payment to the Seller of any amount due by the Buyer under the Seller's Terms and Conditions of Trade. The signatories and the Buyer shall be jointly and severally liable for any amount due by the Buyer under the Seller's Terms and Conditions of Trade.

Guarantor's Name: _____

Signature: _____

Address: _____

Phone Number: _____

Guarantor's Name: _____

Signature: _____

Address: _____

Phone Number: _____

Witness Name: _____

Witness Signature: _____

Address: _____

Credit References:

Beau Ideal Limited Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean Beau Ideal Limited and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean:
 - 1.4.1 All goods supplied by the Seller to the Buyer including without limitation any tyres and all associated goods and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by the Seller to the Buyer; and
 - 1.4.2 All inventory of the Buyer that is supplied by the Seller; and
 - 1.4.3 All goods supplied by the Seller and further identified in any invoice issued by the Seller to the Buyer. The invoices issued by the Seller to the Buyer are deemed to be incorporated into and form part of these Terms and Conditions of Trade; and
 - 1.4.4 All of the Buyer's present and after acquired goods that the Seller has performed work on or to or in which goods or materials supplied or financed by the Seller have been attached or incorporated;
 - 1.4.5 Where the context so permits any supply of Services as hereinafter defined
 - 1.4.6 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods/Services or the acceptance of any Goods/Services supplied by the Seller to the Buyer shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.2 None of the Seller's agents or representatives is authorized to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorized statements

3. Goods/Services

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorization or any other work commencement forms as provided by the Seller to the Buyer.

4. Price and Payment

- 4.1 At the Seller's sole discretion;
 - (a) The Price of the Goods shall be the Seller's current price at the date of delivery of the Goods according to the Seller's current Price list; or
 - (b) The Price of the Goods shall be the Seller's quoted price, which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quote within thirty (30) days or such shorter time as is specified by the Seller.
- 4.2 Time for payment for the Goods and/or Service shall be of the essence and unless otherwise stated in writing by the Seller shall be due on the delivery of the Goods.
- 4.3 At the Seller's sole discretion, for approved Buyers, payment may be due on the 20th of the month following the posting of a statement to the Buyer's address or address for notices.
- 4.4 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.5 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 given by the Seller.

5. Delivery Of Goods

- 5.1 Delivery of the Goods shall be made to the Buyer's address unless the Buyer uplifts the goods from the Seller's premises in which case delivery takes place when the Goods are fitted to or loaded on the Buyer's vehicle. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

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6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for 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 the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Consumer Guarantees Act 1993

- 7.1 Unless the Buyer expressly notifies the Seller to the contrary the Buyer confirms that the Buyer is acquiring Goods under these terms and conditions for the purposes of a business in terms of s. 43(2) of the Consumer Guarantees Act 1993 and that accordingly the provisions of that Act do not apply.

8. Warranties and Liability

- 8.1 For Goods not manufactured by the Seller:
- (a) the Buyer's sole remedy shall be in accordance with the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty,
 - (b) The Seller does not undertake that repair facilities and parts will be available for the Goods and will not be liable to repair any defective Goods and at its own discretion may:
 - (i) notify the manufacturers of the Goods of any defect notified by the Buyer; and
 - (ii) request the manufacturers to repair or replace any defective Goods.
- 8.2 Subject to Clause 8.3 the Seller warrants that if any defect in any Goods manufactured by the Seller becomes apparent and is reported to the Seller within three (3) months of the date of delivery (time being of the essence) then the Seller will (at the Sellers sole discretion) repair the defect or replace the Goods. All other warranties or liabilities whether express, implied, statutory or otherwise are expressly excluded.
- 8.3 The conditions applicable to the warranty given by Clause 8.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (iv) Fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Seller's consent.
 - (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing Goods or in properly assessing the Buyers claim.
- 8.4 In the case of second hand Goods the Buyer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 8.5 The Seller shall not have any liability to the Buyer whether in contract, tort (including negligence) or otherwise for any loss of profits or business or for any other indirect or consequential loss.
- 8.6 Any liability of the Seller to the Buyer whether in contract, tort (including negligence) or otherwise shall not in any case exceed the price of the Goods giving rise to that liability.

9. Defects/Returns

- 9.1 The Buyer shall inspect the Goods on delivery or installation and shall within five (5) working days of delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 9.2 Except as provided in this clause, the Buyer is not entitled to return the Goods to the Seller for any reason. For defective Goods which the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) repairing or replacing the Goods, or refunding the Price provided that:
- (a) the Buyer notifies the Seller within five (5) days of delivery that the Goods are defective;

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- (b) the Seller is given a reasonable opportunity to investigate the Buyer's claim;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- 9.3 The Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements resulting from the return and/or transportation of any defective Goods to the manufacturer.

10. Default & Consequences Of Default

- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month (30% per annum) and shall accrue at such a rate after as well as before any judgement.
- 10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all costs of collection.
- 10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 10.4 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer 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 Buyer or any asset of the Buyer; then
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

11. Title

- 11.1 It is the intention of the seller and agreed by the Buyer that property in the Goods shall not pass until:
- (a) The Buyer has paid all amounts owing for the particular Goods; and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 11.2 It is further agreed that:
- (a) The Buyer shall not deal with the money of the Seller in any way, which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (c) If the Buyer defaults in performance of any obligation under these terms and conditions then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) Receipt by the Seller 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 the Seller's ownership of rights in respect of the Goods shall continue.
 - (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

12. Personal Property Securities Act 1999

- 12.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;
- 12.2 The Buyer undertakes to:
- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

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- (b) indemnify, and upon demand reimburse, the Seller 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;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller;
- (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and
- (e) immediately advise the Seller 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.
- (f) The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- (g) The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

12.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA

13. Security And Charge

13.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or 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 the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause 12, 13.1 (a) & (b) inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

14. Cancellation

14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice.

15. Privacy Act

15.1 The Buyer and the Guarantors (if separate to the Buyer) authorise the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness or marketing any Goods and Services provided by the Seller to any other party.

15.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 15.1

15.3 Where the Buyer is a natural person the authorities under clause 15.1 & 15.2 are authorities or consents for the purposes of the Privacy Act 1993.

16. Lien & Stoppage in Transit

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

- (a) a lien on the goods;
- (b) the right to retain them for the price while the seller is in possession of them;

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- (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.

17. Unpaid Sellers rights to dispose of Goods

17.1 In the event that:

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

18. Buyers Disclaimer

18.1 The Buyer 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 by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement.

19. General

- 19.1 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, prejudiced or impaired.
- 19.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand.
- 19.3 The Buyer shall not set off against the Price amounts due from the Seller.
- 19.4 The Seller 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 such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 19.5 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 19.6 Neither party shall be liable for any default due to any act of God, war, strike, and lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

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