



**Foundation Foods**

PO Box 17699  
Christchurch 8840  
Phone: 03-372 3454  
Fax: 03-312 6290  
www.foundationfoods.co.nz  
FreePhone: **0508 STOCKS**  
**0508 786257**

# Credit Account Application

Customer Trade Name: \_\_\_\_\_  
Customer Legal Name: \_\_\_\_\_  
Delivery Address: \_\_\_\_\_  
Postal Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Mobile Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Accounts Payable Contact: \_\_\_\_\_ Purchasing Contact: \_\_\_\_\_  
Registered Office: \_\_\_\_\_ Company Number: \_\_\_\_\_  
Identification Number: \_\_\_\_\_ Nature of Business: \_\_\_\_\_

Sole Trader:  Partnership:  Limited Company:   
Name of Directors/Partners: \_\_\_\_\_ Private Address: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Trade References	Phone Number
_____	_____
_____	_____
_____	_____

**Declaration:**  
As the client I have read and understand the Terms and Conditions of Trade as stated on the reverse side of this page and agree to abide by them (to the exclusion of all others).

Signature: \_\_\_\_\_ Full Name: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Full Name: \_\_\_\_\_ Date: \_\_\_\_\_

*100% Natural  
Consistent Quality  
For Quality Stocks and Glazes*



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# Credit Account Application

## 1 DEFINITIONS

1.1 *Customer* means the person or legal entity described in the application, or stated on the Invoice or order form, buying goods and/or services from **Foundation Foods Limited**.

1.2 *Goods* means any goods provided by the Seller to the Customer, as described in any purchaser order or instruction from the Customer.

1.3 *Loss* means any loss, cost (including legal costs), liability, warranty, damage or expense.

1.4 *Price* means the purchase price of the Goods and any other costs payable to the Seller by the Customer as indicated on the Seller's invoice.

1.5 *Seller* means **Foundation Foods Limited**, and any company which is directly or indirectly a subsidiary of **Foundation Foods Limited**.

1.6 *Terms* means these terms and conditions.

## 2 ACCEPTANCE OF TERMS

2.1 Any instructions received by the Seller from the Customer for the supply of Goods shall constitute acceptance of these Terms.

2.2 If the Customer orders any Goods from the Seller the Goods will be supplied on these Terms to the exclusion of all other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3 PRICE

3.1 Prices unless otherwise stated, do not include goods and services tax, other taxes, levies or tariffs, freight or insurance charges which, if applicable, will be an extra charge to the Customer.

3.2 The price for the Goods payable by the Customer will be specified on the Seller's invoice or quotation or if no quote is provided, the Seller's standard charges at the time will apply.

3.3 Unless otherwise agreed, the Customer will be responsible for the cost of transportation of all Goods to the Customer, which will be charged to the Customer at the rates that the Seller notifies to the Customer from time to time.

3.4 Unless stated otherwise GST will be payable by the Customer as an additional amount on the price for Goods and other charges and will be payable by the Customer at the same time that full payment for the Goods is required under clause 4.2.

## 4 PAYMENT TERMS

4.1 Once Goods are ordered, payment shall be made for Goods according to these Terms, whether or not the Goods have been delivered and an order cannot be cancelled by the Customer except where allowed at law.

4.2 Payment for Goods shall be made, at the Seller's election, either in full or before the 20th day of the month following the date of the Seller's invoice, or on the receipt of delivery of goods (the *due date*).

4.3 If full payment for the Goods is not made on the due date, the Customer will, on demand by the Seller:

- (a) pay interest at the rate of 2.5% per month (calculated on a daily basis) on any amount owing after the due date until the date that payment is made in full, whether before or after judgment; and
- (b) reimburse the Seller for any disbursements, expenses and legal costs incurred by the Seller in respect of any default by the Customer, including any debt collection agency fees or solicitors' fees (on a full indemnity basis).

4.4 Payment may be made by cash, cheque, electronic banking or any other method agreed in writing by the Seller.

4.5 All amounts payable by the Customer under these Terms must be paid in full without any withholding, deduction or set-off of any kind.

## 5 RISK AND DELIVERY

5.1 The Goods remain at the Seller's risk until the earlier of delivery of the Goods to the Customer or when title to the Goods passes to the Customer.

5.2 For the purposes of these Terms, delivery of the Goods shall be deemed complete when the Seller, or the Seller's general carrier, gives possession of the Goods to the Customer.

5.3 While the Seller will use reasonable endeavours to deliver the ordered Goods to the Customer, the Seller shall not be liable to the Customer for any damage or Loss due to any failure by the Seller to deliver the Goods promptly or at all.

## 6 TITLE

6.1 Title to the Goods shall not pass to the Customer until the Customer has made payment in full for all Goods supplied by the Seller.

6.2 The Customer gives necessary authority to the Seller to enter any premises occupied by the Customer, at any reasonable time, to remove any Goods not paid for in full by the Customer. The Seller shall not be liable for damages, costs or expenses or any other Losses suffered by the Customer as a result of this action.

## 7 RETURN OF GOODS

7.1 The Customer shall be deemed to have accepted the Goods unless the Customer notifies the Seller otherwise in writing within 2 days of delivery of the Goods to the Customer.

7.2 If the Customer, in accordance with clause 7.1, notifies the Seller in writing within 2 days of the delivery of the Goods that the Goods are not accepted then the Customer may return the Goods to the Seller. The Customer shall pay for the delivery of any Goods returned to the Seller including Goods returned under this clause 7.2 except where the Goods are defective or damaged in which case the Seller shall pay for delivery of the returned defective or damaged Goods to the Seller.

7.3 If the Customer does not notify the Seller in writing within 2 days of the delivery of the Goods that the Goods are not accepted, then the Customer may, but only with the Seller's prior consent, return the Goods to the Seller. The Customer shall pay for the delivery of any Goods returned to the Seller under this clause 7.3.

## 8 SELLER'S LIABILITY

8.1 Where any of the Goods are defective or damaged, the Seller's sole liability to the Customer is limited to, at the Seller's election, either replacing the defective or damaged Goods or refunding to the Customer the price of the defective or damaged Goods.

8.2 Except as set out in these Terms or otherwise expressly agreed in writing, all conditions, representations, warranties, terms and undertakings are excluded (including those expressed or implied by law) to the maximum extent permitted by law. The Seller and Buyer agree that the guarantees contained in the Consumer Guarantees Act 1993 (CGA) are excluded where the Customer acquires Goods from the Seller in trade and it is fair and reasonable in the circumstances that the CGA not apply.

8.3 If the Customer on-sells the Goods to a third party, the Customer shall indemnify the Seller for any Losses incurred due to third party claims against the Seller.

8.4 Notwithstanding any other provision:

- (a) the Seller shall not be liable for any loss of profit, loss of revenue, loss of savings, loss of business opportunity or goodwill or for any indirect or consequential loss; and
- (b) if despite the other provisions of these Terms, the Seller has any liability to the Customer, the Seller's maximum liability will be limited to the price of the Goods to which the claim relates.

8.5 The limitations and exclusions in this clause apply irrespective of the basis of the claim, including in contract, tort (including negligence), equity, statute or otherwise.

## 9 PERSONAL PROPERTY SECURITIES ACT 1999

9.1 The Customer agrees that the provisions in these Terms constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 (PPSA)) in respect of which the Seller may register a financing statement on the Personal Property Securities Register.

9.2 The Customer agrees to sign such documents and do such other things as the Seller may require in order to enable the Seller to register and perfect that interest and obtain and maintain a first ranking priority position over the Goods and their proceeds.

9.3 The Customer hereby waives its rights contained in sections 114(1)(a), 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

## 10 CANCELLATION

10.1 The Seller may cancel these Terms or cancel delivery of any Goods to the Seller at any time before the Goods are delivered by giving written notice to the Customer. The Seller shall not be liable for any Loss arising from such cancellation.

## 11 PRIVACY ACT 1993

11.1 The Customer permits the Seller to collect, use and retain and disclose to any person, any information concerning the Customer, in each case for the purpose of assessing the Customer's creditworthiness, to enforce any rights under these Terms, or the marketing of any goods & services provided by the Seller.

## 12 DISPUTE RESOLUTION

12.1 If a dispute arises out of or in connection with these Terms and the Seller considers the dispute is one suitable for mediation the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators will be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of the Resolution Institute.

12.2 Any dispute or difference arising out of or in connection with these Terms which cannot be resolved by mediation may be referred to arbitration under the Arbitration Act 1996 (NZ) in Christchurch, New Zealand (unless the parties agree otherwise in writing) before a sole arbitrator agreed between the parties or, if the parties cannot agree within seven days after the arbitration has been initiated, then the arbitrator shall be appointed by the President of the New Zealand Law Society. The decision of the arbitrator shall be final and binding on all parties. To avoid doubt, this clause shall not apply to any failure by the Customer to pay any undisputed amount for which the Seller may issue proceedings in any court of competent jurisdiction.

## 13 MISCELLANEOUS

13.1 Severability: If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.

13.2 No waiver: Failure by the Seller to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights the Seller has in these Terms, and any waiver by the Seller must be in writing.

13.3 Variation: The Seller reserves the right to review and change these terms and conditions at any time and will notify the Customer of this in writing at which time the changes will take effect.

13.4 Force Majeure: The Seller shall not be liable for failure or delay to perform any of its obligations if the delay or failure is beyond its control.

13.5 Assignment: The Customer shall not assign all or any of its rights or obligations under these terms without the prior written consent of the Seller.

13.6 Governing law: These Terms will be governed by New Zealand Law and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters arising under these Terms.