

**CREDIT APPLICATION FORM**

027 631 6219

accounts@laysfasteners.co.nz

17-19 Reece Cres, Wanaka

BUSINESS INFORMATION:

BUSINESS TYPE PUBLIC / PRIVATE COMPANY / TRUST / CHARITY

COMPANY NUMBER

FULL BUSINESS NAME

TRADING NAME (IF DIFFERENT FROM ABOVE)

BUSINESS ADDRESS

DELIVERY ADDRESS (IF DIFFERENT FROM ABOVE)

CONTACT NAME

POSITION

PHONE

EMAIL

ACCOUNTS PAYABLE NAME

ACCOUNTS PH NUMBER

ACCOUNTS EMAIL

AMOUNT OF CREDIT REQUESTED \$

DETAILS OF DIRECTORS:

FULL LEGAL NAME(S)

ADDRESS

1

2

3

INDIVIDUAL / SOLE TRADER OR PARTNERSHIP

SURNAME

FIRST NAMES

DATE OF BIRTH

RESIDENTIAL ADDRESS

CONTACT NUMBER

TRADE REFERENCES:

COMPANY NAME:

CONTACT NAME/NUMBER:

1

2

3

PAYMENT TERMS AND CONDITIONS WITH LAYS FASTENERS:

I/we apply to open a credit account and acknowledge that I/we have read the terms in this application and agree to abide by the terms.

1. Payment is due on the 20th of the following month from invoice. Failure to do so will result in the account being placed on credit stop without notice, until payment is made. Overdue accounts may incur a interest charge of 2.5%.

2. Continued non compliance may result in the account being closed and the account being handed over to a credit agency to recover the outstanding debt. All costs of collection including debtors fee's are onchargeable to the account.

3. Title of the goods remain with Lays Fasteners Ltd until they have been paid in full.

FULL NAME

SIGNED

DATE

LAYS FASTENERS OFFICE USE

ACC MANAGER

PRICE STRUCTURE

ACC CODE



CREDIT APPLICATION FORM

027 631 6219

accounts@laysfasteners.co.nz

17-19 Reece Cres, Wanaka

DECLARATION

By signing and returning this Application, I/we (the Customer):

1. Understands that Lays Fasteners Ltd reserves the right to decline this Application.
2. Confirm that the information supplied by me/us in this Application is correct and complete and I/we agree to immediately advise the supplier of change to the information contained in this Application.
3. Have read and understood the Supplier's standard terms and conditions of trade ("Terms of Trade") included with this Application and agree to be bound by the Terms of Trade (including any variations or replacement) and this Application.
4. Agree that all orders for goods (being the goods described on the invoices) placed with the Supplier are supplied on these terms and on the Terms of Trade.
5. Authorise any person or company to provide the Supplier with such credit information as the Supplier may require about me/us.
6. Authorise Lays Fasteners to collect personal information about me/us from the trade referees named in this Application and from the credit reference agencies used by Lays Fasteners. I/We acknowledge that such information is collected for any purpose connected with my/our business, for considering this Application and for all purposes in connection with Lays Fasteners marketing of products and services in New Zealand. I/We consent to Lays Fasteners disclosing any such information to credit reference and debt collection agencies as part of information exchanges with them. I/We acknowledge that my/our rights at law in relation to obtaining and correcting all information about me/us held by Lays Fasteners are not affected.
7. Acknowledge that where more than one applicant applies for credit under this Application, each applicant will be jointly and severally liable.

SIGNED BY THE APPLICANT

NAME

POSITION

SIGNATURE

DATE

GUARANTEE (IF YOU CANNOT PROVIDE TRADE REFERENCES)

In consideration of Lays Fasteners Ltd approving this Application by the Applicant ("the Customer"), I (the guarantor, whose name is listed below) jointly and severally unconditionally guarantee payment by the Customer of all monies due and owing by the Customer to the Supplier, in respect of all credit extended by the Supplier as a consequence of this Application including all monies due and owing by the Customer to the Supplier under the terms of the Supplier's Terms of Trade. I acknowledge that I have read and understood the contents of the Supplier's Terms of Trade.

I accept that as between the Supplier and myself I am liable as a principal debtor in respect of such monies. I accept that my guarantee is unaffected by the unenforceability of any payment of such monies, by the liquidation or bankruptcy of the Customer, by the giving of time or any indulgence to the Customer by the Supplier or any other matter. I accept that the Supplier may make demand for payment on me without demand being made of the Customer.

FULL NAME OF GUARANTOR

OCCUPATION OF GUARANTOR

ADDRESS OF GUARANTOR

SIGNATURE OF GUARANTOR

DATE

LAYS FASTENERS LIMITED

TERMS & CONDITIONS

1 DEFINITIONS

- 1.1 "Lays Fasteners", "We" and "Us" means Lays Fasteners Limited, its successors and assigns or any person acting on behalf of and with the authority of Lays Fasteners Limited.
- 1.2 "Customer" and "You" means the person/s, companies or other entity purchasing the Goods as specified in any invoice or order.
- 1.3 "Goods" means all Goods or Services supplied by Lays Fasteners Limited to the Customer at the Customer's request (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between Lays Fasteners and the Customer in accordance with clause 3 below.

2 ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions at the time the Customer signs these terms or places an order, whichever is earlier.
- 2.2 Where more than one Customer has entered into these terms, the Customers shall be jointly and severally liable.

3 PRICE AND PAYMENT

- 3.1 At Lays Fasteners' sole discretion the Price will be either;
 - a) as indicated on invoice as provided by Lays Fasteners to the Customer in respect of Goods supplied; or
 - b) the current Price (subject to clause 3.2) at the date of delivery of the Goods, according to Lays Fasteners current Price list; or
 - c) For quantity purchases the Price may be at a discounted rate.
- 3.2 Lays Fasteners may give notice to the Customer at any time up to seven days before delivery increase the Price of the Goods to reflect any increase in the cost to the Customer beyond the reasonable control of Lays Fasteners.
- 3.3 The cost of delivery is separate.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on the 20th of the month following the order being placed.
- 3.5 Payment of all previous orders must be made in full before any further orders can be placed.
- 3.6 You agree to pay for the products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the products.
- 3.7 If payment is not made in full by the due date, we are entitled to charge you interest on the unpaid overdue balance at the rate of 25% per annum compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by us, and we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further products or performance of further services until the account is paid.
- 3.8 Notwithstanding clause 3.4 above, all payments shall immediately become due to us if you refuse to accept delivery of any products, if we reasonably believe that the information which you have given us in your application for to open a wholesaler account is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or any other matter.
- 3.9 The parties agree that all prices are in New Zealand dollars and must be paid in New Zealand dollars. Any bank fees or exchange rate fees are the sole responsibility of the Customer.

4 RISK AND DELIVERY OF GOODS

- 4.1 The cost of delivery is in addition to the Price. Lays Fasteners will invoice the Price and the cost of delivery at the time of dispatch.
- 4.2 Delivery of the Goods ("Delivery") is taken to occur at the time that Lays Fasteners (or Lays Fasteners' nominated carrier) delivers the Goods to the Customer's nominated physical address even if the Customer is not present at the address.
- 4.3 Any time or date given by Lays Fasteners to the Customer is an estimate only. The Customer must still accept Delivery of the Goods even if late.
- 4.4 Lays Fasteners will make every effort to ensure Delivery of Goods is on time but will not be liable to you for any loss or damage arising in any way from any delay in Delivery or performance. Delay in Delivery or performance does not entitle you to cancel any order.
- 4.5 Where you ask us to deliver the Goods directly to another person, that person takes possession of the Goods for you as your agent, but you are still directly responsible to us under these terms and conditions.
- 4.6 Delivery of the Goods to a third party nominated by the Customer shall be deemed to be Delivery to the Customer for the purposes of this agreement.

5 TITLE

- 5.1 Title and ownership in products will not pass to the Customer but will remain with Lays Fasteners until Lays Fasteners receive payment in full of the Price of the products, delivery and all other amounts that the Customer owes to Lays Fasteners for any reason.
- 5.2 Until payment has been made and title passes to the Customer, the Customer shall hold any products in trust for Lays Fasteners and store the Goods in a manner to enable them to be identified and cross referenced to particular invoices.
- 5.3 Where Lays Fasteners reasonably believes the Customer are or will be in breach of any part of clauses 3, 4 or 5 of these terms and conditions, Lays Fasteners or its agent may without notice enter any premises under the Customers control to remove any products which are the property of Lays Fasteners, and without prejudice to any other of Lays Fasteners' rights. The Customer indemnifies Lays Fasteners against all costs and claims in respect of its exercise of rights under this clause 5.

6 RISK

- 6.1 If Lays Fasteners retains title to the Goods nonetheless all risk for the Goods passes to the Customer on Delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Customer, Lays Fasteners are entitled to without prejudice to any of its rights or remedies under these terms (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 Lays Fasteners is sufficient evidence of the rights of Lays Fasteners to receive the insurance proceeds without the need for any person dealing with Lays Fasteners to make further enquiries.

7 SECURITY INTERESTS

- 7.1 The Customer agrees;
 - a) that it will do all acts necessary and provide Lays Fasteners on request all information Lays Fasteners require to register a financing statement over the Goods or their proceeds, and that the Customer will advise Lays Fasteners immediately in writing of any changes to that information. The Customer waive all rights to receive a copy of any verification statement of a financing statement.
 - b) that they will supply Lays Fasteners, within 2 business days of Lays Fasteners' written request, with copies of all security interests registered over the Customers personal property, and the Customer authorises Lays Fasteners as agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in the Customers possession or control.
 - c) agree that Lays Fasteners may require the Customer to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by Lays Fasteners, whether or not the change was initiated by the Customer.
- 7.2 If Lays Fasteners repossess Goods under this agreement, they may retain those Goods or dispose of them without notice or statement of account to the Customer or any other person, and, after deducting reasonable costs of sale, Lays Fasteners may credit any surplus by way of setoff against any sums owing to Lays Fasteners. Lays Fasteners will not be obliged to resupply any repossessed inventory.

8 PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 8.1 If the Customer is a company or a trust, the directors or trustees (as the case may be) agree, in consideration for Lays Fasteners agreeing to supply the Goods, that in their personal capacity they jointly and severally personally undertake as principal debtors to Lays Fasteners payment of all moneys now and at any time owed by the Customer and indemnify Lays Fasteners against non-payment by the Customer.
- 8.2 Any personal liability in clause 8.1 will not release the Customer from their liabilities and obligations contained in these Terms of Trade. The Customer and the directors/trustees will be jointly and severally liable for payment of all sums due under these Terms of Trade.

9 CUSTOMER'S DISCLAIMER

- 9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Lays Fasteners or to sue for damages or to make any claim in relation to any misrepresentation made to the Customer by Lays Fasteners and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

10 DEFECTS

- 10.1 The Customer shall inspect the Goods on delivery and shall within 1 week of delivery (time being of the essence) notify Lays Fasteners of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The notification of defect must be accompanied by photographic proof of the damage to the item and the packaging. The Customer shall return the items and afford Lays Fasteners an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.
- 10.2 If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 10.3 For defective Goods, which Lays Fasteners has agreed in writing that the Customer is entitled to reject, Lays Fasteners' liability is limited to either (at Lays Fasteners' discretion) replacing the Goods at no extra charge or reimburse the Customer for the Goods.

11 RETURNS

- 11.1 Returns will only be accepted provided that:
 - a) the Customer has complied with the provisions of clause 10.1; and
 - b) Lays Fasteners has agreed in writing to accept the return of the Goods; and
 - c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - d) Lays Fasteners will not be liable for Goods which have not been stored or used in a proper manner; and
 - e) the Goods are returned in the condition in which they were delivered and with all packaging material and paperwork in as new condition as is reasonably possible in the circumstances.

12 INDEMNITY

- 12.1 To the full extent permitted by law, the Customer will indemnify Lays Fasteners and keep Lays Fasteners indemnified from and against any liability and any loss or damage Lays Fasteners may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by the Customer or its representatives.

13 WARRANTY

- 13.1 For Goods not manufactured by Lays Fasteners, the warranty shall be the current warranty provided by the manufacturer of the Goods.

14 LIMITATION OF LIABILITY

- 14.1 The provisions of the Consumer Guarantees Act shall not apply to any supply of products to the Customer where supplied in the course of business, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms and conditions.
- 14.2 Lays Fasteners' maximum liability to you shall be limited to the value of any faulty products or services supplied, and Lays Fasteners Limited and its employees, contractors and agents, any manufacturers of the products or any of their materials or components, will not be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs (including costs of returning products to Lays Fasteners Limited or to any manufacturer), consequential loss, loss of profits and damage caused by or arising from delays in manufacturing or delivery, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials, components, manufacture or compilation of the products.
- 14.3 We will not be liable to you for any losses caused by your own actions or negligence or events beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.

15 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 15.1 All intellectual property shall remain the property of Lays Fasteners Limited or any Supplier entitled to it, and neither Lays Fasteners Limited nor its Suppliers transfer any right, title or interest in the intellectual property to you.
- 15.2 You must not use any trademarks which are the property of Lays Fasteners Limited or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trademarks or any similar words or marks, except to the extent authorised by Lays Fasteners Limited in writing.
- 15.3 You agree to dispatch the products only under the trademarks under which they are supplied by Lays Fasteners Limited, and under no circumstances shall you apply any of the trademarks to any product which is not a genuine branded product supplied to you by Lays Fasteners Limited.
- 15.4 You must not cause or permit anything which may interfere with, damage or endanger the trademarks or other intellectual property rights of Lays Fasteners Limited or its Suppliers, or assist or allow others to do so.
- 15.5 You must advise Lays Fasteners Limited immediately when you become aware of any unauthorised use or attempted use by any person of the trademarks or other intellectual property rights of Lays Fasteners Limited.
- 15.6 If your account with Lays Fasteners Limited is terminated, you must immediately discontinue use of any of the trademarks which are the property of Lays Fasteners Limited in any sign, or advertising and thereafter you shall not use those trademarks directly or indirectly in connection with your business.
- 15.7 You agree to ensure that all Confidential Information given by Lays Fasteners Limited to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.
- 15.8 This clause 15 shall survive the termination of the agreement.

16 DEFAULT AND CONSEQUENCES OF DEFAULT

- 16.1 Without prejudice to any other remedies Lays Fasteners may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Lays Fasteners may suspend or terminate the supply of Goods to the Customer. Lays Fasteners will not be liable to the Customer for any loss or damage the Customer suffers because Lays Fasteners has exercised its rights under this clause.

17 CANCELLATION

- 17.1 Lays Fasteners 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 Lays Fasteners shall repay to the Customer any money paid by the Customer for the Goods. Lays Fasteners shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Lays Fasteners as a direct result of the cancellation (including, but not limited to, any loss of profits).

18 PRIVACY ACT 1993

- 18.1 You authorise us:
- To collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
 - To disclose information about you;
 - To any other person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligation to you;
 - To such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.
- 18.2 The Customer shall have the right to request Lays Fasteners for a copy of the information about the Customer retained by Lays Fasteners and the right to request Lays Fasteners to correct any incorrect information about the Customer held by Lays Fasteners.

19 FORCE MAJEURE

- 19.1 Lays Fasteners will not be in breach of this agreement for any interruption, delay or cancellation of the Booking for the Services caused by any act of God, earthquake, fire, instruction of the Government, epidemic, pandemic or any other matter outside Lays Fasteners' reasonable control.

20 COSTS

- 20.1 The Customer must pay Lays Fasteners' costs (including legal costs, as between solicitor and client) of and incidental to the enforcement of attempted enforcement of the Lays Fasteners' rights, remedies and powers under these Terms.

21 DISPUTE RESOLUTION

- 21.1 If a dispute arises between the parties, the parties agree to meeting in good faith to try and resolve the dispute.
- 21.2 If the dispute is not resolved within five (5) working days, the parties agree to go to mediation. The mediator is to be wither chosen by both parties and where a mediator cannot be agreed, a mediator will be appointed by the President of the Otago branch of the New Zealand Law Society.
- 21.3 If the dispute is not resolved within a month of the initiation of the mediation proceedings, then the dispute will be adjudicated in accordance with the process set out in the Act at any time.
- 21.4 The costs of the mediator and/or arbitrator will be shares between the parties.

22 GENERAL

- 22.1 The failure by Lays Fasteners to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Lays Fasteners' right to subsequently enforce that provision. 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.
- 22.2 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.
- 22.3 Lays Fasteners shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense suffered by the Customer arising out of a breach by Lays Fasteners of these terms and conditions.
- 22.4 Lays Fasteners may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.5 The Customer cannot assign or subcontract their rights under these terms and conditions without the written consent of Lays Fasteners.
- 22.6 The Customer agrees that Lays Fasteners may amend these terms and conditions at any time. If Lays Fasteners makes a change to these terms and conditions, then that change will take effect from the date on which Lays Fasteners notifies the Customer of such change.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.