

CREDIT APPLICATION

GYMLeader

ahead of the game in sports equipment

TYPE OF BUSINESS	LIMITED LIABILITY CO.	SOLE TRADER	PARTNERSHIP
BUSINESS NAME	_____		
TRADING NAME (if any)	_____		
BUSINESS ADDRESS	_____ _____		
POSTAL ADDRESS	_____		
PHONE NUMBER	_____	FAX NUMBER	_____
EMAIL ADDRESS	_____		
YEARS ESTABLISHED	_____	NATURE OF BUSINESS	_____
ACCOUNTS DEPARTMENT CONTACT	_____		

LIMITED LIABILITY COMPANY	
DIRECTORS FULL NAMES AND RESIDENTIAL ADDRESSES	<u>PHONE</u>
1. _____	_____
2. _____	_____
3. _____	_____
PARTNERSHIP/SOLE TRADER	
PARTNERS/PROPRIETORS FULL NAMES AND RESIDENTIAL ADDRESSES	<u>PHONE</u>
1. _____	_____
2. _____	_____
3. _____	_____
TRADE REFERENCES	<u>PHONE</u>
1. _____	_____
2. _____	_____
3. _____	_____

I/We hereby make application for a credit account to be opened in the name of the company/person.
I/We agree to pay this account by the 20th of the month following date of invoice and that if unpaid by due date, Gymleader New Zealand Limited reserve the right to impose interest at 3% per calendar month until principal and interest has been paid in full.
I/We accept that all collection costs or unrecoverable solicitors costs expended in recovering payment of this account will be paid by me on demand.
I/We understand that the completion of this form does not guarantee that a credit account will be opened.
I/We agree to the following Retention of Title clause "Title in the goods supplied does not pass until the goods have been paid for in full."
I/We authorise any person or company to provide you with such information as you may require in response to your credit and/or employment enquiries.
I/We authorise you to furnish any third party details of this application and any subsequent dealings that I/We may have with you as a result of this application being actioned by you. We acknowledge receipt of a copy of the Terms and Conditions of Sale and Supply agreement of which this Guarantee forms part.

SIGNED _____ (PROPRIETOR/PARTNER/DIRECTOR)(DELETE ONE)

NAME _____ DATE _____

OFFICE USE ONLY:	APPROVED/DECLINED
DATE _____	ACCOUNT NUMBER
SIGNED _____	

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TERMS AND CONDITIONS OF SALE AND SUPPLY

Gymleader New Zealand Limited ("the Company") products and services ("goods") are supplied subject to the following Terms and Conditions of sale which shall prevail despite any indication to the contrary given by any person acting or purporting to act on this Company's behalf. Any variations to the conditions set out below require our written confirmation (including all representations or understandings which may conflict with any of them).

1 Acceptance

Receipt of an order will be deemed acceptance by the Customer of these terms, notwithstanding anything stated to the contrary in the Customer's enquiries on the Customer's order.

2 Freight and Insurance

Freight and transit insurances are to the Customer's account unless specified to the contrary.

3 Payment

- 3.1 Payment is due on the 20th of the month or 7 days or as agreed at the time of sale, (on practical completion), following the ready date of the order being after the goods have been manufactured. And the Company reserves the right to treat each separate delivery as a separate contract for the purposes of payment.
- 3.2 A deposit of 50% of expected invoice total in the form of a booking fee is payable on any transaction where stated or where non-standard or custom manufactured product or similar may need to be sourced on behalf of the Customer for their customised order.

4 Default of Payment

- 4.1 The Customer agrees to pay interest on all sums outstanding at 3% per month from the date of default (i.e. when payment becomes due and is not made) until payment is made in full.
- 4.2 If a solicitor or debt collector is instructed by the Company the Customer agrees to pay the solicitor or debt collector's reasonable fees and disbursements as charged to the Company in full.
- 4.3 All payments by the Customer shall be applied first in the reduction of interest and costs due pursuant to 4.1 and 4.2 and the balance shall then be applied in reduction of amounts due under 4.1.

5 Ownership and Risk

- 5.1 Ownership of the goods shall remain vested in the Company until the Customer has made payment in full for all goods supplied by the Company to the Customer, together with all interest and monies due.
- 5.2 Until payment in full in terms of Clause 5.1:
 - 5.2.1 All goods supplied shall remain the sole and absolute property of the Company;
 - 5.2.2 The Customer will hold the goods in trust for the Company as bailee of the Company;
 - 5.2.3 The Customer shall store the goods on the Customer's premises in such a manner as to make them readily identifiable as belonging to the Company and shall display such identification as may from time to time be requested by the Company;
 - 5.2.4 If the goods are sold by the Customer then all proceeds of sale shall be the property of the Company and shall be retained in a separate account by the Customer in trust for the Company and shall not be intermingled with any other monies or paid into any overdrawn bank account and shall at all times be kept identifiable as monies held in trust for the Company;
 - 5.2.5 If before it becomes the owner of the goods the Customer makes new objects from the goods or incorporates them into or with other goods those objects or new goods shall be held on trust for the Company;
 - 5.2.6 The Customer will "on demand" (as those words are defined in the Fifth Schedule in the Chattels Transfer Act 1924) assign to the Company all proceeds of the sale of the goods by the Customer and will upon request disclose to the company full details of the sale and the proceeds;
 - 5.2.7 Where the Company has reasonable cause to believe the Customer has not strictly complied with these Terms and Conditions or that the Customer has or will commit an act of bankruptcy or (being a company) has had a receiver appointed or about to be appointed the Company may repossess any or all of the goods supplied and for such purpose may at any time day or night enter by force if necessary upon any premises where such goods are reasonably thought to be stored.
- 5.3 Notwithstanding anything else herein contained, the risk in any and all goods supplied shall pass to the Customer on dispatch of the goods from the Company's premises and in particular, the Customer shall be responsible for all goods in transit and shall fully insure them.
- 5.4 The Customer shall reimburse the Company for all liabilities and expenses (including legal expenses) incurred by it in enforcing or attempting to enforce any rights it has under these terms and conditions of supply.

6 Cancellations

- 6.1 Notwithstanding any other agreement as to the terms of payment, the total purchase price shall immediately become due and payable and the company shall have the right to forthwith cancel this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:
 - 6.1.1 The Customer ceases or threatens not to carry on the business;
 - 6.1.2 The Customer enters into any negotiations for any arrangement or composition with its creditors;
 - 6.1.3 The Customer is unable to pay its debts (including contingent liabilities) as they fall due;
 - 6.1.4 The Customer becomes bankrupt or commits an available act of bankruptcy or proceedings are taken for liquidation of the Customer's affairs.
 - 6.1.5 The Customer, being a Company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the Customer's assets of which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme or arrangement with its creditors or any class thereof.
 - 6.1.6 Any distress or execution is levied on the Customer.
 - 6.1.7 Breach by the Customer of any other terms contained in this agreement.
- 6.2 Upon the happening of any or more than one of the above events the Company will be entitled to repossess and resell goods which remain the property of the Company within the terms of Clause 5.

7 Prices

- 7.1 Prices may be quoted by the Company as either GST exclusive or inclusive, and are based on rates and charges in effect at the date of the sales contract or as listed in the Company's price book.
- 7.2 Any difference between these rates and charges and those actually ruling at the time of delivery or incurred the Company will be to the Customer's account.
- 7.3 The rates and charges referred to above include, but are not limited to:
 - 7.3.1 The rates of currency exchange, freight, insurance and customs duty;
 - 7.3.2 The cost of labour, wharfage, clearing, handling and delivery;
 - 7.3.3 The cost of the goods to the Company.
- 7.4 Where contracts are based on the latest terms of supply available to the Company from a specific supplier the Company reserves the right to pass on to the Customer any extra costs incurred by the Company as a result of:
 - 7.4.1 Changes in the terms of supply by that supplier, or
 - 7.4.2 The Company accessing an alternative supplier.
- 7.5 Where the Company issues special quoted prices on the Company's standard quote form, the conditions of the quotation document shall apply, notwithstanding other related standard terms and conditions of sale as contained herein.

8 Tax

Any tax is additional to the Company's quoted prices and shall be the Customer's responsibility.

9 Limitation of Liability

- 9.1 The Company's liability in any event (whether under these Terms and Conditions or otherwise howsoever) is limited to:
 - 9.1.1 The replacement of any goods supplied free of charge on the same basis as originally agreed or as set out in Clause 2 hereof; or
 - 9.1.2 At the option of the Company a refund of the sale price; and
 - 9.1.3 In respect of defective goods not manufactured by it, the Company shall in no event be liable to pay to the Customer any amount in excess of such amount (if any) as it shall have received from its supplier in respect of the defect; and
 - 9.1.4 If the contract is frustrated, and/or the goods cannot be delivered for any cause whatsoever, then it is expressly agreed that all expenses incurred by the Company in connection with the contract are to be set off against any sum payable by the Company to the Customer, and the balance, if any, of the Company's expenses in connection with the contract over the amount of the set-off, is to be paid to the Company by the Customer.
- 9.2 The Company accepts no responsibility for labour, material and other costs incurred in removing defective goods and re-lifting its replacement or for any loss or damage howsoever arising from and whether directly or indirectly attributable to, any defect in any goods supplied.
- 9.3 Without limiting anything elsewhere contained in these Terms and Conditions, the Company will not be liable for labour, material and other costs or any consequential losses incurred in respect of the Company's failure to supply the goods, or to supply them by any particular time or at any particular place.
- 9.4 "Downgrade" material being over-runs, seconds or similar is sold without warranty as to product quality or compliance with specification.
- 9.5 Except as expressly provided in these Conditions all express or implied conditions, statements or warranties, whether statutory or otherwise, are expressly excluded.
- 9.6 The Customer shall indemnify the Company against any and all liability the Company may incur as a result of supplying or agreeing to supply goods to the Customer other than any liability arising under Clause 9.2 or any liability to a consumer arising under the Consumer Guarantees Act 1993. This indemnity shall extend to any liability of the Company to any third party who has acquired the goods from the Customer for business purposes and the Customer has failed to contract out the provisions of the Consumers Guarantees Act 1993.
- 9.7 Disputed Accounts – if any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as described in Clause 4 herein. Payment of the disputed portion (where on reasonable grounds substantiated at the time by the Customer in writing it can be contended by the Customer that there is genuine dispute) may be withheld provided the matter is brought to the Company's attention in writing as soon as it is discovered or within 7 days of discover (time being of the essence). If the time limit for notification is not observed then the disputed portion of the account must be paid to the Company (who will then hold it in trust pending resolution of the dispute) before the Customer may initiate any claim or proceeding to resolve the dispute.
- 9.8 No clause herein shall be construed as limiting any other clause, but shall be construed as extending the widest limitation of liability in favour of the Company (which term shall for the purposes of this clause be deemed to include officers, employees and agents).

10 Testing

All testing and inspection of the goods by the Customer will be at the Company's premises and once undertaken shall be deemed to be final and conclusive. Where there is a dispute of goods measure to specification, cost of testing will be the responsibility of the Customer.

14 Law Applicable

This contract shall be construed and governed by the laws of New Zealand.

12 The Privacy Act 1993

- 12.1 The Buyer acknowledges that:
 - 12.1.1 Personal information collected or held by the Company (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:
 - 12.1.1.1 Administering, whether directly or indirectly, the Company's contracts and enforcing the Company's right hereunder;
 - 12.1.1.2 Marketing goods and services provided by the Company;
 - 12.1.1.3 Ascertaining at any time the Customer's creditworthiness and obtaining at any time credit reports, character references or credit statements;
 - 12.1.1.4 Enabling the Company to notify any credit agency of any application for credit or default on any obligation of the Customer to the Company enabling the Company to provide such personal information to any credit agency so such credit agency can maintain effective accounting records;
 - 12.1.1.5 Enabling the Customer to communicate with the Company for any purpose;
 - 12.1.2 Such personal information is collected by and will be held by the Company whose address is 40 Saleyards Road, Otahuhu, Auckland, New Zealand.
 - 12.2 The Customer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Company.
 - 12.3 The Customer authorises the Company to obtain at any time from any person or entity, any information the Company may require to process and/or accept any application for credit the Customer may make to the Company or to perform or complete any of the other purposes for which the Customer has provided personal information to the Company. The Customer authorises any such person to release to the Company any personal information that person holds concerning the Customer.
 - 12.4 For the purposes of the preceding clauses the term "The Company" includes any financier or discounter of the Company's contract with the Customer or any related Company of the Company. The term "related Company" has the meaning given it by the Companies Act 1993 or replacement legislation.

13 Force Majeure

The Company is not liable for failure or delay in supply or delivery occasioned by strike, industrial dispute, natural disaster, shortage or unavailability of products or raw materials, shortage of labour, lack of skilled labour, failure of the Customer's supplier's delay in transit, import restriction, legislative governmental or other prohibition or restriction, fire, flood, hostilities, commotions or other causes whatsoever beyond the Company's reasonable control including power outage or telecommunication disruption or act of war or terrorist attack.

14 Local Laws

It shall be entirely the responsibility of the Customer to ensure that the goods and the use thereof comply with the laws, regulations and codes of a particular country or local authority and with the requirements of the Customer.

15 Acceptance of Proposals

The Company's proposal shall be deemed to be withdrawn unless accepted by the Customer within a period of 3 months from the date of issue, unless otherwise agreed.

16 Allocation of Payments Received

Where, at any time, there is an amount owing by the Customer under any two or more contracts, the Company may apply a payment by the Customer in such manner (including in such order and to any amounts owing to the Company, including under another contract) as the Company thinks fit and in the Company's sole discretion (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by this Agreement also secures the amount owing under each contract and this Agreement shall be construed accordingly.

17 Payment by Other than Cash

Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured.

18 Inspection and Returns

The Customer agrees to inspect the goods and verify delivery within 7 days of receipt. If no notice to the contrary has been communicated to the Company, the Customer is deemed to have accepted the goods or services as received. The Company will, at the Company's option issue a credit note for the goods or will repair or replace the goods where disclosed as faulty on such inspection and/or independent testing following delivery and when the goods are authorised by the Company to be returned to the Company as faulty or delivered as the case may be. Any non faulty goods will incur a 15% restocking fee.

19 Queries/Disputes

The Company will not consider any job or account queries which are not raised within one month from the date of invoice or where the dispute in question relates to goods which have been altered or laid.

20 Security Interest

- (a) Each contract for the supply of goods entered into between the Customer and the Company creates, in favour of the Company, a security interest in the goods which are the subject of the contract and such security interest secures the payment by the Customer to the Company of all amounts the Customer may owe the Company from time to time and at any time, including future advances.
- (b) The Customer authorises the Company to take possession of the collateral if the Company from time to time deems it necessary to do so to perfect or re-perfect the Company's security interest in the collateral. For the purposes of this clause, possession includes but is not limited to the meaning ascribed to it in section 18 of the Personal Property Securities Act 1999 (PPSA).
- (c) The buyer agrees that it will not do any thing or allow any act to be done which would have the effect of allowing the creation of a lien over any or all of the collateral that is the subject of the Company's security interest.
- (d) The Customer agrees to indemnify the Company, upon demand from the Company, for all costs and expenses (including legal fees) incurred by the Company as a result of the Customer defaulting under this Agreement and in complying with any demand made under section 162 of the PPSA.
- (e) On the request of the Company, the Customer shall promptly do all things necessary and provide all information required by the Company to perfect and maintain the perfection of any security interest granted to the Company by the Customer (including registration of a financing statement over the goods or the proceeds thereof).
- (f) The Customer shall promptly notify the Company of any changes to its personal details as supplied on the credit application form. Where the Customer proposes to change its name, it shall notify the Company accordingly within five days of the change taking effect.
- (g) The Customer shall, within five working days of receiving a written request from the Company, supply the Company with copies of all security interests registered over the Customer's personal property and the Customer hereby authorises the Company, as its duly appointed agent, to request information from any secured party relating to any security interest to which the Customer is a debtor.

21 Security Interest where goods become Accessions, etc:

The Company's interest in the goods continues if the goods are processed included or dealt with in any way causing them to become accessions processed or commingled goods (as defined in the PPSA). The security interest in the original goods will continue in the whole in which they are included and the Customer agrees that it will not grant to any other person a security interest in either the goods or in the whole.

22 Receiver

In addition to any other right, power or remedy of the Company expressed or implied in this agreement, at any time after the Customer has defaulted in its obligations, the Company may appoint in writing any person or persons receiver of all or any of the collateral and the receiver shall have the power set out in the Receivership Act 1993.

23 Trustee Liability

Where the Customer is a trust, each trustee of the trust is bound by this Agreement and the trustees' liability shall not be limited to the assets of trust unless the trustee is an independent trustee (being a trustee who has no right to or interest in any of the assets of the trust either directly or indirectly except in the trustee's capacity as trustee of that trust). However this limitation of liability for independent trustees shall not affect the liability of the independent trustee that personally guarantees the Customer's obligations under this Agreement.

24 Consumer Guarantees Act 1993

Where the Customer is not a consumer as defined in the Consumer Guarantees Act 1993 ("the CGA"), the CGA will not apply to the supply of the goods from the Company to the buyer.

25 Contracting out the Personal Property Securities Act (PPSA)

The parties contract out of sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA.

The parties contract out of Customers rights in sections 116, 119, 120(2), 121, 125, 129, 131 and 132 of the PPSA.

26 Personal Guarantee

In consideration of the Company at my/our express request (as I/We doth/do hereby admit and acknowledge) granting to

_____ (“the Customer”) credit pursuant to the foregoing terms of trade I/We

_____ being director(s) / partner(s) / proprietor(s) of the Customer do hereby covenant and agree with the Company granting to the Customer a credit facility on terms and conditions negotiated between the Company and the Customer.

I/We personally guarantee the payment to the Company on demand of all sums of money owed by the Customer to the Company pursuant to the credit facility and also liquidated damages and expenses and legal costs incurred by the Company in relation to the credit facility.

I/We as Guarantor acknowledge that I am/we are principal debtors and accordingly the Company may proceed against me/us for recovery of monies whether or not it has first proceeded against the Customer. If there is more than one person comprising the Guarantor then we acknowledge that we guarantee jointly and severally the obligations of the Customer to you.

I/We acknowledge that no indulgence granting of time, waiver or forbearance to sue or any other concession relieves me/us from liability herein.

The Customer and the Guarantor each hereby authorise the Company to make whatever credit reference enquiries it considers justified from my/our financial and other sources and to provide credit references relating to the Customer and/or the Guarantor if/when requested by the Company of third parties.

The Guarantors have signed and dated the front page of this Credit Account Application Form. In doing so accepts the terms and conditions set out herein.

27 Amendments to Terms of Trade

These terms of trade may be amended at any time by the Company. The terms of amendment shall be forwarded by the Company to the Customer and upon orders being received from the Customer or the Company's quotations being accepted by the Customer the supply of goods and services shall thereafter be deemed to be based on the amended terms of trade so forwarded and the Customer acknowledges that it will have contracted on those amended terms.

28 General

Nothing contained in these terms of trade shall be deemed to exclude or restrict any rights or remedies that the Customer may have under the Fair Trading Act 1986. If any provision in these conditions is illegal, invalid or unenforceable the validity and enforceability of the remaining provisions of these terms of trade will not be affected.

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