

# ALUMINIUM WINDOW SERVICES LTD

145E Target Rd, Glenfield, Auckland.  
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## ACCOUNT APPLICATION FORM

### ENTITY DETAILS:

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ..... ("the Customer")

(Please tick) Sole Trader  Individual  Partnership  Ltd Company  Other (please state): .....

Trading as: .....

Postal Address: .....

Physical Address: ..... Email:.....

Nature of Business: ..... Years in Business:.....

Telephone: ..... Fax: ..... Date of Birth: .....

Account contact Name & Position: .....

### OWNERSHIP please insert Owner(s) / Directors Name(s) in full

1:..... Address: .....

2: ..... Address: .....

IF LIMITED LIABILITY COMPANY - Address of Registered Office: .....

Date of Incorporation: ..... Incorporation No: .....

### FINANCIAL & PROFESSIONAL ADVISORS

Shareholders Funds: ..... Paid Up: .....

Name of Accountant: ..... Solicitor: .....

Bank:..... Branch: ..... Acct No: .....

TRADE REFERENCES			
Company	Contact Name	Phone Number	Account open since

General Description of Goods/Products/Services to be Provided:.....

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Aluminium Window Services Limited 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 Customer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

Signed ..... Print Name ..... Designation .....

Dated this .... day of ..... 20.....

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "Aluminium Window Services Ltd" shall mean Aluminium Window Services Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Aluminium Window Services Ltd.
- 1.3 "Products" shall mean:
  - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Aluminium Window Services Ltd to the Customer; and
  - 1.3.2 all Products supplied by Aluminium Window Services Ltd to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Aluminium Window Services Ltd; and
  - 1.3.4 all Products supplied by Aluminium Window Services Ltd and further identified in any invoice issued by Aluminium Window Services Ltd to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Products that are marked as having been supplied by Aluminium Window Services Ltd or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Aluminium Window Services Ltd; and
  - 1.3.6 all of the Customer's present and after-acquired Products that Aluminium Window Services Ltd has performed work on or to or in which goods or materials supplied or financed by Aluminium Window Services Ltd have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall also mean all products, goods, services and advice provided by Aluminium Window Services Ltd to the Customer and shall include without limitation the manufacture of plastic mouldings, outdoor light fittings and custom injection moulding and custom design services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Aluminium Window Services Ltd to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between Aluminium Window Services Ltd and the Customer and includes all disbursements eg charges Aluminium Window Services Ltd pay to others on the Customer's behalf subject to clause of this contract.

### 2. ACCEPTANCE

- 2.1 Any instructions received by Aluminium Window Services Ltd from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Aluminium Window Services Ltd to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Aluminium Window Services Ltd to any other party.
- 3.2 The Customer authorises Aluminium Window Services Ltd to disclose any information obtained to any person for the purposes set out in clause .
- 3.3 Where the Customer is a natural person the authorities under clauses and are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Aluminium Window Services Ltd at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Aluminium Window Services Ltd between the date of the contract and delivery of the Products and Services.

### 5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Aluminium Window Services Ltd in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

### 6. QUOTATION

- 6.1 Where a quotation is given by Aluminium Window Services Ltd for Products and Services:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Aluminium Window Services Ltd reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services .

### 7. RISK

- 7.1 The Products and Services remain at Aluminium Window Services Ltd's risk until delivery to the Customer.
- 7.2 Delivery of Products and Services shall be deemed complete when Aluminium Window Services Ltd gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Aluminium Window Services Ltd making time of the essence.

### 8. AGENCY

- 8.1 The Customer authorises Aluminium Window Services Ltd to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 8.2 Where Aluminium Window Services Ltd enters into a contract of the type referred to in clause it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

### 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products and Services supplied by Aluminium Window Services Ltd passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Aluminium Window Services Ltd and of all other sums due to Aluminium Window Services Ltd by the Customer on any account whatsoever. Until all sums due to Aluminium Window Services Ltd by the Customer have been paid in full, Aluminium Window Services Ltd has a security interest in all Products and Services .
- 9.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with Aluminium Window Services Ltd until the Customer has made payment for all Products and Services , and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services , title to these new Products and Services shall deemed to be assigned to Aluminium Window Services Ltd as security for the full satisfaction by the Customer of the full amount owing between Aluminium Window Services Ltd and Customer .
- 9.3 The Customer gives irrevocable authority to Aluminium Window Services Ltd to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Aluminium Window Services Ltd believes a default is likely and to remove and repossess any Products and Services and any

other property to which Products and Services are attached or in which Products and Services are incorporated. Aluminium Window Services Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Aluminium Window Services Ltd may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Aluminium Window Services Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

9.4 Where Products and Services are retained by Aluminium Window Services Ltd pursuant to clause the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

9.5 The following shall constitute defaults by the Customer:

9.5.1 Non payment of any sum by the due date.

9.5.2 The Customer intimates that it will not pay any sum by the due date.

9.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.

9.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Aluminium Window Services Ltd remains unpaid.

9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.

9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

9.5.7 Any material adverse change in the financial position of the Customer.

9.6 If the Credit Repossession Act applies to any transaction between the Customer and Aluminium Window Services Ltd, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 10. SECURITY INTEREST FOR SERVICE PROVIDERS

10.1 The Customer gives Aluminium Window Services Ltd a security interest in all of the Customer's present and after-acquired property that Aluminium Window Services Ltd has performed services on or to or in which goods or materials supplied or financed by Aluminium Window Services Ltd have been attached on incorporated.

## 11. PAYMENT ALLOCATION

11.1 Aluminium Window Services Ltd may in its discretion allocate any payment received from the Customer towards any invoice that Aluminium Window Services Ltd determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Aluminium Window Services Ltd, payment shall be deemed to be allocated in such manner as preserves the maximum value of Aluminium Window Services Ltd's purchase money security interest in products.

## 12. DISPUTES AND RETURN OF PRODUCTS

12.1 No claim relating to Products and Services will be considered unless made within seven (7) days of delivery.

12.2 The Customer shall be deemed to have accepted the Products and Services provided unless the Customer notifies Aluminium Window Services Ltd otherwise within seven (7) days of delivery of the Products and Services to the Customer.

12.3 No Products and Services will be accepted for return by Aluminium Window Services Ltd without prior approval of Aluminium Window Services Ltd.

## 13. LIABILITY

13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Aluminium Window Services Ltd which cannot by law (or which can only to a limited extent by law) be

excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Aluminium Window Services Ltd, Aluminium Window Services Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

13.2 Except as otherwise provided by clause Aluminium Window Services Ltd shall not be liable for:

13.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Aluminium Window Services Ltd to the Customer; and

13.2.2 The Customer shall indemnify Aluminium Window Services Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Aluminium Window Services Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Aluminium Window Services Ltd agents or employees in connection with the Products and Services.

## 14. WARRANTY

14.1 Manufacturer's warranty applies where applicable.

14.2 Any written warranty that Aluminium Window Services Ltd provide to the Customer will also form part of these terms and conditions of trade.

## 15. CONSUMER GUARANTEES ACT

15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from Aluminium Window Services Ltd for the purposes of a business in terms of section 2 and 43 of that Act.

## 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Aluminium Window Services Ltd agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Aluminium Window Services Ltd the payment of any and all monies now or hereafter owed by the Customer to Aluminium Window Services Ltd and indemnify Aluminium Window Services Ltd against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 17. MISCELLANEOUS

17.1 Aluminium Window Services Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

17.2 Failure by Aluminium Window Services Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Aluminium Window Services Ltd has under this contract.

17.3 If any provision of this contract shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.