

SPENCER GROUP LIMITED (trading as TAPESOL)

CUSTOMER APPLICATION

Date / / 20

Customer Name (full legal name) _____

Trading Name (if different from above) _____

Customer Type: Partnership / Company / Sole Trader

Street Address _____

Postal Address (if different from above) _____

Telephone Number _____ Email Address _____

Bank _____ Branch _____

Lawyer _____ Telephone Number _____

Accountant _____ Telephone Number _____

Trading References

(A) _____

(B) _____

(C) _____

The Customer hereby applies to open an account with TAPESOL. The Customer acknowledges that TAPESOL's General Terms and Conditions shall apply at all times to all dealings between TAPESOL and the Customer. The Customer and the Signatory warrant to TAPESOL that the information contained in the Customer Application (or otherwise provided by the Customer to TAPESOL) is true and correct.

The Signatory confirms that he or she has authority to bind the Customer for the purposes of this Agreement and has read and understood TAPESOL's General Terms and Conditions.

The Guarantor confirms that he or she has read and understood TAPESOL's General Terms and Conditions. The Guarantor agrees to personally guarantee to TAPESOL the obligations of the Customer contained in this Agreement on the terms described in TAPESOL's General Terms and Conditions.

Signed by the Customer:

Full name of Signatory:

Position of Signatory:

Signed by the Guarantor

Full name of Guarantor:

TAPESOL'S GENERAL TERMS AND CONDITIONS

Price, Payment and Default

1. The Price shall be that price applicable to the Goods at the time the relevant Goods are dispatched from TAPESOL's premises. TAPESOL shall be permitted to increase the Price from time to time with or without notice to the Customer.
2. GST and other taxes and duties relating to the supply of the Goods to the Customer are not included in the Price and shall be payable by the Customer in addition to the Price at the rate(s) prevailing at the time on demand by TAPESOL.
3. TAPESOL shall issue an invoice for Goods supplied from time to time and the Customer shall pay the amount specified in each invoice issued by TAPESOL no later than the 20th of the month following the date that invoice is issued by TAPESOL. TAPESOL shall be permitted to alter the payment terms at any time and such altered payment terms shall apply from the date TAPESOL notifies the Customer of the altered payment terms.
4. The Customer shall not be entitled to withhold payment of, or to make any deduction from, or set off any amount against, any moneys payable to TAPESOL under this Agreement without the prior written consent of TAPESOL.
5. If:
 - (a) The Customer defaults in fulfilling any obligation contained in this Agreement; or
 - (b) In the sole opinion of TAPESOL the Customer may default in fulfilling any obligation contained in this Agreement; or
 - (c) The Customer indicates that it may default in fulfilling any obligation contained in this Agreement;

TAPESOL may (without prejudice to any other right or remedy of TAPESOL):

- i. Refuse to supply any Goods to the Customer; and/or
- ii. Enter upon the premises where any Goods are located and take possession of and remove those Goods (without being responsible for any damage caused in doing so);

and all costs incurred by TAPESOL as a result of such action shall be immediately payable by the Customer upon written demand from TAPESOL.

6. If any amount falls overdue for payment by the Customer under this Agreement, such late or nonpayment shall constitute a default under this Agreement and the overdue amount shall (without prejudice to any other right or remedy of TAPESOL) bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is received in full. Default interest shall be calculated daily at the Default Interest Rate and shall be compounded monthly. Such default interest shall accrue before and after any judgment.

Delivery, Defects and Risk

7. Delivery of the Goods shall be made in such manner as agreed between TAPESOL and the Customer, or if no such manner is agreed, in the manner elected by TAPESOL in its sole discretion. The Customer shall be liable for all costs associated with the delivery of the Goods and the Customer shall pay such costs immediately upon demand by TAPESOL.
8. TAPESOL shall be entitled to deliver the Goods between 7.00 am and 5.00 pm on any day which is not a Public Holiday and the Goods shall be deemed to have been delivered even if the Customer is not present at the time of delivery.
9. If the Customer fails or refuses, or indicates to TAPESOL that it will fail or refuse to take delivery of any Goods, delivery shall be deemed to have occurred when TAPESOL was willing and able to dispatch the Goods from TAPESOL's premises. Without prejudice to any of its other rights or remedies TAPESOL may, by written notice to the Customer, require the Customer to immediately reimburse TAPESOL for any storage expenses which TAPESOL has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take delivery.
10. TAPESOL shall not be liable for any costs, loss or damage (including any consequential loss) incurred or suffered by the Customer as a result of the late, short or non delivery of the Goods. Any time for delivery indicated by TAPESOL shall be approximate only and shall not be of the essence of this Agreement.
11. TAPESOL shall have no liability to remedy or compensate the Customer or any other liability to the Customer in relation to a defect, if (whether or not the failure has caused or contributed to the defect):
 - (a) The Customer fails to notify TAPESOL in writing of the defect within 48 hours of the Goods being dispatched from TAPESOL's premises; or
 - (b) The instructions given by TAPESOL or the manufacturer of the Goods from time to time in relation to the use of the Goods (including those instructions contained in the Schedule (if any)) have not been complied with; or
 - (c) The Goods have not been properly installed; or
 - (d) The Goods have not been properly maintained.

12. Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time the Goods are delivered to the Customer's premises (if TAPESOL has agreed to be responsible for the delivery of the Goods) and from the time the Goods are dispatched from TAPESOL's premises (in all other circumstances).

Ownership

13. Ownership in any consignment of the Goods shall not pass to the Customer (and the Customer shall be a bailee only) until the time at which the Customer has paid all moneys owing by the Customer to TAPESOL under this Agreement. Until ownership of the Goods has passed to the Customer the Customer shall store and identify the Goods in such a way that the Goods are clearly identified as the property of TAPESOL and TAPESOL may enter the Customer's premises or any place where the Goods are located to inspect the Goods.

Liability

14. The Customer acknowledges that it is acquiring the Goods for the purposes of a business (including the purpose of using the Goods or transforming them, in trade or commerce) and therefore the provisions of the Consumer Guarantees Act 1993 (being a New Zealand act), The Australian Consumer Law (being schedule 2 of the Australian Competition and Consumer Act 2010) and any other consumer laws do not apply to the supply of the Goods (unless otherwise required by law).
15. TAPESOL's liability arising from any cause (whether in contract, tort, any enactment, or otherwise pursuant to the laws of New Zealand, Australia or any other country), including the negligence of TAPESOL or any of its employees, contractors or agents, is excluded to the fullest extent permitted by law and shall be limited in all circumstances to the Price paid by the Customer in relation to the specific Goods giving rise to the claim against TAPESOL.
16. The Customer shall pay to TAPESOL, on demand by TAPESOL, all costs of and incidental to the enforcement or attempted enforcement of TAPESOL's rights, remedies and powers under this Agreement (including costs on a solicitor and own client basis) in the event of a breach or threatened breach by the Customer.

Access to Information

17. The Customer irrevocably authorises TAPESOL:
 - (a) To obtain from any third party such information in respect of the Customer as TAPESOL may require in connection with its lawful commercial purposes including (without limitation) determining whether to extend credit to the Customer and to verify any such information.
 - (b) To provide any such information to any third party in connection with its lawful commercial purposes including (without limitation) determining whether to extend credit to the Customer and to verify any such information.

Personal Guarantee

18. In consideration of TAPESOL agreeing to supply the Goods to the Customer on the terms of this Agreement at the request of the Guarantor, the Guarantor agrees to unconditionally and irrevocably guarantee to TAPESOL the due and punctual payment by the Customer of any amount which the Customer is required to pay under this Agreement and the due and proper performance by the Customer of all its other obligations under this Agreement.
19. The liability of the Guarantor shall constitute a principal obligation of the Guarantor and such liability shall not be released or in any way affected in a manner prejudicial to TAPESOL by any granting of time, waiver or forbearance to sue by TAPESOL or by any other act, omission, matter, circumstance or law under which the Guarantor, as a surety only, would, but for the provisions for this clause, have been released from liability under this Agreement.
20. If the Customer fails to pay punctually any amount owing to TAPESOL under this Agreement, or fails to perform punctually and properly any of its other obligations under this Agreement, the Guarantor, immediately after receiving written notice from TAPESOL to do so, shall pay the amount or perform the obligations in terms of this Agreement.
21. The liability of the Guarantor shall remain in full force and effect until all amounts which the Customer is required to pay, and all obligations which it is required to perform, under this Agreement have been punctually and properly paid or performed (as the case requires) in terms of this Agreement.
22. The obligations of the Guarantor are in addition to, and not in substitution for, any other right which TAPESOL may have in respect of any amount payable, or obligation to be performed, by the Customer and may be enforced against the Guarantor without first having recourse to any such securities or rights and without first taking any action against the Customer.
23. In addition to its obligations set out above the Guarantor shall indemnify TAPESOL in respect of all losses, damages and costs suffered or incurred by TAPESOL arising out of the non-payment of any amount by the Customer or any breach of any of its obligations contained or implied in this Agreement.
24. The Guarantor shall pay to TAPESOL, upon receipt from TAPESOL of written demand for such payment, all costs of and incidental to the enforcement or attempted enforcement of TAPESOL's rights, remedies and powers under this Agreement (including costs on a solicitor and own client basis) in the event of a breach or threatened breach by the Customer or the Guarantor.

General

25. No waiver by TAPESOL of any breach or failure to enforce any provision of this Agreement shall in any way affect, limit or waive TAPESOL's right to subsequently enforce and compel strict compliance with this Agreement.
26. The Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other party without the prior written consent of TAPESOL, which consent may be withheld at TAPESOL's sole discretion. TAPESOL may transfer or assign its liabilities and rights under this Agreement to any other party at any time without being required to obtain the Customer's consent.
27. If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
28. This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
29. This Agreement records the entire arrangement between TAPESOL and the Customer relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
30. No amendment to this Agreement shall be valid unless in writing and executed by TAPESOL.
31. Any facsimile or electronic copy of this Agreement (including any facsimile or electronic copy of any document evidencing the execution of this Agreement by either party) may be relied upon by the other party as though it were an original copy.
32. This Agreement does not establish an employment relationship, joint venture or agency relationship with or between parties.
33. The Signatory confirms that he or she is duly authorised to bind the Customer by signing this Agreement. If it subsequently becomes apparent that the Signatory did not have authority to bind the Customer, the Signatory shall be personally responsible for the obligations of the Customer contained in this Agreement.
34. In this Agreement, unless the context requires otherwise:

"**Agreement**" means the Customer Application, the General Terms and Conditions and the Schedule.

"**Customer**" means the customer detailed in the Customer Application.

"**Default Interest Rate**" means 2.5% per month.

"**Goods**" means all goods and services supplied to the Customer by TAPESOL at any time.

"**GST**" means any goods and services tax or other similar tax which applies to the supply of the Goods (or any of the Goods) pursuant to the laws of New Zealand, Australia or any other country.

"**Guarantor**" means the guarantor detailed in the Customer Application.

"**TAPESOL**" means Spencer Group Limited (trading as TAPESOL) or its assignee.

"**Price**" means the price of the Goods determined in accordance with clause 1.

"**Public Holiday**" means Auckland, New Zealand public holidays being Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day, Auckland Anniversary Day, New Years Day and the day after.

"**Signatory**" means the person who has signed the Customer Application on behalf of the Customer.

35. In this Agreement:
 - (a) Where the context permits, the singular includes the plural and vice versa.
 - (b) Where the Customer comprises two or more persons, an obligation to be performed by the Customer binds those persons jointly and severally.
 - (c) Where two or more persons have agreed to guarantee the obligations of the Customer, an obligation to be performed by the Guarantor binds those persons jointly and severally.
 - (d) References to any "party" mean a party to this Agreement and include the successors, executors, administrators and permitted assignees (as the case may be) of that party.
 - (e) All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any reenactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.

SCHEDULE

Instructions in relation to the use of the Goods