

SHOCKWATCH NEW ZEALAND LIMITED

Address: 173 Oakland Road, RD1, Papakura, Auckland 2580

Phone: (09) 298 1221

Email: admin@shockwatch.co.nz

ACCOUNT APPLICATION FORM

(PLEASE ENSURE ALL RELEVANT FIELDS ARE COMPLETED OR YOUR APPLICATION WILL NOT BE PROCESSED)

ENTITY DETAILS

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

Purchaser")

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

Trading as:

Nature of Business: Years in Business:

Physical Address:

Postal Address: Post Code: Email:

Telephone: Fax:

Contact Name & Position:

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

1 Address:

2 Address:

IF A COMPANY OR INCORPORATED BODY – Address of Registered Office:

Date of Incorporation: Incorporation No:

Date of Birth: (if Applicant is an individual (whether a Sole Trader, Partner in a Partnership or Trustee of a Trust))

FINANCIAL & PROFESSIONAL ADVISORS

Name of Accountant: Solicitor:

Bank: Branch Account No:

TRADE REFERENCES

Company	Contact Name	Phone Number	Account open since

General Description of Goods/Products to be provided:

I/We warrant to Shockwatch New Zealand Limited ("Seller") 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 authorized to submit this application to the Seller on behalf of the Purchaser who/which has read and agrees to be bound by the terms and conditions of trade printed overleaf and as amended as notified to the Purchaser from time to time including by exhibition on the Seller's website www.shockwatch.co.nz I/We authorise the Seller to contact the advisors and trade referees named above for information in connection with this application or any future dealings you may have with me/us/the Purchaser. **Guarantee:** I/we also agree to be bound by the personal guarantee contained in the terms and conditions of trade appearing overleaf and in that regard sign this application form in my/our personal capacity.

If the applicant is a company then this application form must be signed by a director of the company. If the company has more than one director it must be signed by two directors.

Signed Print Name Designation

Signed Print Name Designation

Dated this day of 20.....

Shockwatch New Zealand Limited

Terms and Conditions of Trade

These Terms and Conditions of Trade are the only basis upon which Goods will be supplied by Shockwatch to a Purchaser. By placing an Order with Shockwatch, a Purchaser agrees to accept, and comply with, each of these Terms and Conditions. Any terms and conditions not contained below which are not agreed to in writing by Shockwatch (other than those implied by statute) will not be binding on Shockwatch.

1. Definitions and Interpretation

1.1 In these Terms and Conditions of Trade, unless the context otherwise requires:

- (a) "Application form" means Shockwatch's account application form from time to time as completed and submitted by the Purchaser to Shockwatch;
- (b) "CGA" means the Consumer Guarantees Act 1993 of New Zealand and any amendment, re-enactment or replacement of it
- (c) "Cash Sales" means sales of Goods, payment for which is made at, or before, Delivery;
- (d) "Credit Sales" means sales of Goods, payment for which is due or to be made after Delivery;
- (e) "Delivery" means delivery to the Purchaser of Goods pursuant to an Order;
- (f) "Guarantor" means the person (or persons) named and/or signing the Application Form or otherwise signifying in writing agreement to be liable for the obligations (including but not limited to debts of the Purchaser);
- (g) "Goods" means products supplied or to be supplied by Shockwatch to a Purchaser from time to time;
- (h) "GST" means and includes goods and services tax levied under the Goods and Services Tax Act 1985 and any similar tax imposed subsequently;
- (i) "Loss" means any delay, loss, liability, damage, expense or cost whatsoever and includes (without limitation) direct or consequential loss or damage;
- (j) "Order" means any order or request by the Purchaser to Shockwatch for Goods whether or not in writing;
- (k) "PPSA" means the Personal Property Securities Act 1999 of New Zealand and any amendment, re-enactment or replacement of it and any rules and/or regulations made pursuant to it.
- (l) "Purchaser" means any person who places an Order with Shockwatch and includes such person's agents, employees, executors, administrators, successors and permitted assigns;
- (m) "Shockwatch" means Shockwatch New Zealand Limited trading under that or any other name from time to time (including, but not by way of limitation, the name Shockwatch), its successors and assigns.
- (n) "Terms" means these Terms and Conditions of Trade; and
- (o) "Website" means www.shockwatch.co.nz
- (p) "\$/Dollars" means New Zealand dollars.

1.2 In these Terms, the singular includes the plural and vice versa, and a reference to a "person" includes a company, incorporated society, body corporate, partnership or trust.

2. How a Contract with Shockwatch is formed

- 2.1 Each Order placed by a Purchaser amounts to an offer by it to acquire from Shockwatch the Goods described in the Order upon these Terms. Shockwatch will accept the offer by delivering or providing all or some of the Goods ordered. An offer is to be regarded as accepted unless Shockwatch otherwise advises within a reasonable time after receipt by it of the Order.
- 2.2 Shockwatch may for any reason refuse to sell or supply Goods to the Purchaser (whether as Cash or Credit Sales) and is not required to give reasons for its refusal.

3. Delivery

- 3.1 Even though an Order specifies a quantity of Goods required, and a delivery date, and Shockwatch accepts the Order, the Purchaser agrees that Shockwatch is not bound to deliver that quantity on the delivery date so specified. However, Shockwatch will use all reasonable endeavours to do so.
- 3.2 Shockwatch may deliver only a portion of the quantity of Goods ordered and may invoice the Purchaser for that portion, unless the parties have otherwise agreed in writing. The Purchaser may not refuse to accept delivery of Goods just because Shockwatch has delivered only a portion of the quantity ordered or because delivery was late. However, if delivery is late, the Purchaser may cancel an Order provided it does so before the Goods are delivered and no later than seven (7) days after placing that Order with Shockwatch (or such longer time as Shockwatch and the Purchaser may have agreed in writing).
- 3.3 Unless otherwise agreed in writing Delivery will take place when the Goods are made available for collection by the Purchaser at Shockwatch's premises. The Purchaser is responsible for the cost of and arranging transportation of the Goods and delivery to a carrier is Delivery to the Purchaser. If Shockwatch agrees to assist the Purchaser in arranging transportation of the Goods Shockwatch will use reasonable endeavours to arrange transportation to the Purchaser at its address on the Application Form or such other address subsequently advised by the Purchaser to Shockwatch in writing but Shockwatch will be entitled at any time before collection by the carrier to require the Purchaser to collect the Goods at Shockwatch's premises.
- 3.4 Shockwatch will not be liable for any Loss incurred or suffered by the Purchaser as a result of any delay in delivery of Goods and if the Purchaser delays in taking Delivery or requests a delay in Delivery the Purchaser will pay Shockwatch's storage charges until the Purchaser collects the Goods.

4. Price and Payment

- 4.1 Prices for Goods quoted from Shockwatch's price lists may be varied by Shockwatch at any time without notice and Goods will be invoiced to the Purchaser at the then current price in New Zealand dollars for those Goods.
- 4.2 A price list or product catalogue of Shockwatch is not an offer by Shockwatch to sell any Goods appearing in that list or catalogue, nor is it an offer to sell such Goods at the price specified in that list or catalogue.

- 4.3 Unless otherwise specified, all prices quoted do not include transport costs or GST payable in respect of the supply of Goods. The Purchaser agrees that the amount payable by it for the supply of Goods will be the total of the price for the Goods, and the transport costs, insurance, sales tax and/or GST in respect of the supply of those Goods.
- 4.4 Unless otherwise agreed by Shockwatch in writing, and subject always to clause 4.6, the Purchaser must pay for all Goods in cash to Shockwatch without deduction at the time of Delivery. However, Shockwatch may, in its sole discretion, grant credit to a Purchaser. If credit is granted, payment will be due at the time notified in writing on the face of any invoice evidencing the delivery or supply of Goods. If, and only if, there is no such time notified or other specific and written agreement then payment must be made in cleared funds on or before the twentieth calendar day of the month following the end of the month in which Delivery was made or if later the date of Shockwatch's invoice for the Goods.
- 4.5 If the value of the Goods ordered by the Purchaser is under \$100,000 then no deposit will be payable but if the value of the Goods is \$100,000 or more then the Purchaser will pay a deposit of 15% to Shockwatch to secure the order and Shockwatch will credit the Purchaser for such payment when it sends an invoice for the Goods.
- 4.6 Notwithstanding clause 4.4, Shockwatch reserves the right at any time to require immediate payment for all Goods supplied whether or not credit was granted to the Purchaser. Payment for those Goods will be due immediately upon receipt by the Purchaser of written notice from Shockwatch that it requires immediate payment.
- 4.7 The Purchaser agrees that in respect of payment under these Terms time is of the essence.

5. Default in Payment

- 5.1 If the Purchaser fails to pay any amounts due to Shockwatch under clauses 4.4 and/or 4.5 or otherwise under these Terms Shockwatch may charge interest on all amounts overdue at the rate of 2% above the interest rate for the time being charged by Shockwatch's main commercial bankers in New Zealand on unsecured overdrafts to commercial customers (excluding public companies whether listed on a stock exchange or not) of average creditworthiness and interest will be charged and accrue from the first day on which such amounts become overdue until a Court judgment is obtained by Shockwatch for such amounts (including interest charged under this clause) or if earlier, until Shockwatch receives effective payment of all such amounts.
- 5.2 If Shockwatch incurs any cost relating to the collection or enforcement of payments from the Purchaser, the Purchaser agrees to indemnify Shockwatch against such costs (including legal costs on a solicitor and own client basis) which will be a debt due to Shockwatch and payable by the Purchaser to Shockwatch on demand.

6. Title and Security

- 6.1 Title to the Goods now or in the future sold or supplied by Shockwatch passes to the Purchaser only when the Purchaser has made payment in full for all Goods provided by Shockwatch and of all other sums due to Shockwatch by the Purchaser on any account whatsoever provided that in the case of the tender of a cheque payment will not be deemed to be made until the cheque has cleared. Until all sums due to Shockwatch by the Purchaser have been paid in full, Shockwatch has a security interest in all Goods now or in the future sold or supplied by Shockwatch to the Purchaser and in the proceeds arising from the Goods (including an insurance claim regarding the Goods) and/or in any article purchased with the proceeds of sale of the Goods.
- 6.2 Notwithstanding that title to the Goods remains with Shockwatch until payment in full is received, the risk in the Goods passes to the Purchaser upon Delivery. The Purchaser must insure the Goods from the date of delivery to the date the title in the Goods passes to the Purchaser.
- 6.3 Until payment in full has been received by Shockwatch and title to the Goods has passed to the Purchaser the following apply:
- The Purchaser will hold the Goods solely as fiduciary for Shockwatch;
 - The Purchaser will store the Goods separately from its own Goods and those of other persons and in such manner as will clearly identify the Goods as the property of Shockwatch;
 - The Purchaser is authorised to sell the Goods but only as agent and fiduciary for Shockwatch and the entire proceeds of the sale or any other proceeds arising from the Goods including an insurance claim regarding the Goods must be held in a separate account in trust for Shockwatch;
 - The Purchaser gives irrevocable authority to Shockwatch to enter any premises occupied by the Purchaser or on which Goods are situated at any reasonable time after default by the Purchaser or before default if Shockwatch believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Shockwatch will not be liable for any costs, damages, expenses or losses incurred by the Purchaser 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. Shockwatch may either resell any repossessed Goods and credit the Purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Purchaser's account with the invoice value thereof less such sum as Shockwatch reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 6.4 If the Goods are attached, fixed, or incorporated into any property of the Purchaser, by way of any manufacturing or assembly process by the Purchaser or any third party, title in the Goods will remain with Shockwatch until the Purchaser has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods will be deemed to be assigned to Shockwatch as security for the full satisfaction by the Purchaser of the full amount owing between Shockwatch and Purchaser.
- 6.5 The Purchaser waives the right to receive a copy of the verification statement pursuant to Section 148 of the PPSA and where Goods are retained by Shockwatch pursuant to clause 6.3 the Purchaser waives the right to receive notice under Section 120 of the PPSA and to object under Section 121 of the PPSA.
- 6.6 The Purchaser agrees sections 114(1)(a), 133 and 134 of the PPSA will not apply to this Agreement or the security interest under this Agreement and waives the Purchaser's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 6.7 The Purchaser must not change its name without first notifying Shockwatch of the Purchaser's new name not less than seven (7) days before the change takes effect.
- 6.8 The following will constitute defaults by the Purchaser:
- Non payment of any sum by the due date.

- (b) The Purchaser intimates that it will not pay any sum by the due date.
 - (c) Any Goods are seized by any other creditor of the Purchaser or any other creditor intimates that it intends to seize Goods or any action is taken by any third party (including but not limited to any creditor) which may adversely affect the interest of Shockwatch in the Goods.
 - (d) Any Goods in the possession of the Purchaser are materially damaged while any sum due from the Purchaser to Shockwatch remains unpaid.
 - (e) The Purchaser is bankrupted or put into liquidation or a receiver is appointed to any of the Purchaser's assets.
 - (f) A Court judgment is entered against the Purchaser and remains unsatisfied for seven (7) days.
 - (g) Any material adverse change in the financial position of the Purchaser.
 - (h) Failure to provide any information or to do any act or thing at the request of Shockwatch as in the opinion of Shockwatch may be necessary or desirable to enable Shockwatch to register and/or perfect under the PPSA the security interest created by this Agreement as a first priority interest or such other priority as Shockwatch may agree in writing and/or failure to advise Shockwatch immediately on any change of any of the details of the Purchaser on the Account Application Form.
- 6.9 In the event of a default by the Purchaser pursuant to clause 6.8 Shockwatch may without prejudice to and in addition to any other rights or remedies it may have exercise all or any of the following rights:
- (a) Delay delivery of any Goods until the default is remedied to Shockwatch's satisfaction;
 - (b) Suspend or cancel (in whole or in part) this Agreement or any other agreement with the Purchaser by written notice to that effect;
 - (c) Recover from the Purchaser, or deduct from or set-off against any amount Shockwatch may owe the Purchaser, all amounts for any damage, losses, costs of expenses (including actual legal costs and expenses) arising from the default or non-performance by the Purchaser;
 - (d) By notice to the Purchaser, require that all amounts owing to Shockwatch shall, whether or not due for payment, immediately become due and payable; and
 - (e) The Purchaser will allow or procure access for Shockwatch to the premises where the Goods are kept and allow Shockwatch to retake possession of the Goods.
- 6.10 The Purchaser further agrees that Shockwatch may exercise a general lien against any Goods or property belonging to the Purchaser that is in the possession of Shockwatch for all sums outstanding under this contract and any other contract to which the Purchaser and Shockwatch are parties and if the lien is not satisfied within 7 days of the due date Shockwatch may, having given notice of the lien at its option either:
- (a) Remove such Goods and store them in such a place and in such a manner as Shockwatch thinks fit and proper and at the risk and expense of the Purchaser; or
 - (b) Sell such Goods or part thereof upon such terms as it thinks fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.
- 6.11 If Part 3A of the Credit Contracts and Consumer Finance Act 2003 applies to any transaction between the Purchaser and Shockwatch, the Purchaser has the rights provided in that Act despite anything contained in these Terms.
- 7. Returns**
- 7.1 Subject to clause 7.2, Shockwatch may, at its discretion, accept Goods submitted for return by the Purchaser upon terms notified by Shockwatch to the Purchaser. No returns of Goods will be accepted by Shockwatch unless those Goods and all accessories are returned within seven days of delivery unused in "as new" condition in the original packaging and with all manufacturer's instructions and documentation). The Purchaser agrees that Shockwatch is entitled to charge a re-stocking fee equal to 2% of the invoice price of any Goods returned to and accepted by Shockwatch.
- 7.2 Shockwatch will (if requested to do so by the Purchaser) accept returns of Goods upon mutually agreeable terms where there has been a breach by Shockwatch of any warranty conferred by law with respect of the Goods. Where the return of Goods is accepted by Shockwatch under this clause, Shockwatch's liability to the Purchaser is limited, at Shockwatch's discretion to either:
- (a) replacing those Goods with equivalent Goods; or
 - (b) paying or crediting the Purchaser the cost of acquiring equivalent Goods but not exceeding the price of the Goods.
- 8. Repairs and replacements**
- Subject to the provisions of the CGA if applicable Shockwatch does not undertake that repair facilities and/or parts will be available for the Goods nor any liability or obligation to repair any defective Goods but at its discretion Shockwatch may:
- (a) notify the manufacturers of the Goods of any defect notified to Shockwatch by the Purchaser in writing; and
 - (b) request the manufacturers to repair or replace any defective Goods.
- 9. Supply for Business Purpose**
- Where these Terms would otherwise be subject to the provisions of the CGA and where the supply of the Goods is a supply for business purposes, the Purchaser agrees that the Goods are supplied to the Purchaser for business purposes in terms of Sections 2 and 43 of the CGA and that the provisions of the CGA do not apply to that supply. Accordingly such a purchaser is not a Consumer for the purpose of these Terms and the Purchaser will indemnify and hold harmless Shockwatch from and against any claim by the Purchaser not covered by any express written guarantee given by Shockwatch.
- 10. Warranties**
- 10.1 This condition 10.1 will apply where the Purchaser is not a consumer under the CGA and the only warranty in respect of the Goods will be the current warranty provided by the manufacturer of the Goods. Shockwatch will be under no liability whatsoever except to use reasonable endeavours to assist the Purchaser in obtaining performance by the manufacturer of manufacturer's obligations detailed and stipulated in the manufacturers warranty. The Purchaser will read, understand and comply with all "Safety Notices" stipulated by the manufacturer of the Goods.
- 10.2 This condition 10.2 will apply where the Purchaser is a consumer under the CGA and subject to the Purchaser's rights and remedies contained in the CGA if as the result of some fault on the part of Shockwatch the Goods are defective in that they are not of acceptable quality; or they are not reasonably fit for any particular communicated purpose where the Purchaser has reasonably relied on Shockwatch's skill or judgement; then the Purchaser must notify Shockwatch within seven (7) days

of the date when such defect was discovered or ought to have been discovered and, where possible, return the goods to Shockwatch when:

- (a) if appropriate, Shockwatch will at its sole discretion remedy the defect by way of repair, replacement or (if necessary) refund; or
- (b) where the defect cannot be remedied or is of substantial character (as defined in the CGA) Shockwatch will refund the Purchaser's money or replace the Goods, or compensate the Purchaser (in the case of a sale) for the amount of any reduction in value of the Goods below the price.

10.3 With the exception of the relevant statutory warranties contained in the CGA, no warranty or condition will be implied against Shockwatch by any other statute, at common law or otherwise.

11. Sellers liability

11.1 In the event of any breach of this contract by Shockwatch the remedies of the Purchaser will be limited to damages which will not exceed the Price of the Goods.

11.2 Shockwatch will be under no liability whatever to the Purchaser for any indirect loss and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by Shockwatch of this Agreement.

11.3 All warranties and conditions whether implied by statute or otherwise are excluded from this Agreement provided that nothing in this contract will restrict or exclude liability for death or personal injury caused by the gross negligence of Shockwatch (provided there is full proof of gross negligence on behalf of Shockwatch) or affect the statutory rights of a purchaser dealing as consumer.

11.4 The Purchaser disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made by any servant or agent of Shockwatch and the Purchaser acknowledges that they buy the Goods relying solely upon their own skill and judgement and that Shockwatch will not be bound by nor responsible for any term, condition or representation relating to the Goods.

12. Assignment

12.1 Shockwatch may deal or dispose in any way with all or any part of its rights and obligations under this contract without the Purchaser's consent.

12.2 The Purchaser may not assign, transfer or otherwise dispose of any of the rights or obligations of this or any other contract with Shockwatch that is subject to these Terms without the prior written consent of Shockwatch.

13. Resale of Goods and Indemnity

Where the Purchaser re-sells the Goods or any part of them for the purpose of its business, the Purchaser undertakes to obtain written agreement from its customer contracting out of the provisions of the CGA and further the Purchaser agrees to indemnify and hold harmless Shockwatch against all actions, suits, claims, costs and demands in respect of any claim made against Shockwatch by any customer of the Purchaser who is not a consumer and which is not covered by any express written guarantee of Shockwatch covering the relevant Goods.

14. Privacy Act 1993 and Privacy Code 2004

The Purchaser and the Guarantor/s (if separate to the Purchaser) authorises Shockwatch to collect, retain and use any information about the Purchaser including but not limited to such information contained in the Application Form, for the purpose of assessing the Purchaser's creditworthiness or for the marketing of products and/or services; and to disclose information about the Purchaser, whether collected by Shockwatch from the Purchaser directly or obtained by Shockwatch from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Purchaser.

15. Miscellaneous

15.1 If any provision of these terms and conditions is invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

15.2 These Terms are governed by and must be construed in accordance with the laws of New Zealand, and each party irrevocably submits to the jurisdiction of the courts in New Zealand.

15.3 Shockwatch will not be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm, pandemic or other event beyond the reasonable control of Shockwatch.

15.4 The Purchaser will not set off against the Price any amount due from Shockwatch.

15.5 Any notice given under these Terms must be in writing and will be deemed to have been received by the person to whom it was sent in the case of hand delivery, upon delivery; in the case of pre-paid ordinary post, three (3) days after the date on which it was posted and in the case of facsimile upon the sender obtaining confirmation that the transmission was successfully completed.

15.6 Shockwatch may amend these Terms from time to time but such amendments will not take effect until Shockwatch has notified the Purchaser in writing of those amendments or if earlier the date of appearance of the amendments on the Website and thereafter any orders placed with Shockwatch will be deemed to be offers by the Purchaser to purchase Goods on the amended Terms.

16. Guarantee

In consideration of Shockwatch at the request of the Guarantor agreeing to sell the Goods and/or grant credit to the Purchaser the Guarantor (and if more than one jointly and severally) unconditionally guarantees to Shockwatch payment of all monies payable to Shockwatch by the Purchaser and performance by the Purchaser of any other obligation to be performed by the Purchaser and the Guarantor acknowledges and declares that this Guarantee is a continuing guarantee and Shockwatch is at liberty to regard the Guarantor in all respects as principal debtor and will not be obliged to take action against the Purchaser.