KONG'S (NZ) LTD
19 PORUTU PLACE, TAURIKO, TAURANGA 3110 | PH 07 571 2188 | EMAIL sales@kongs.co.nz

ACCOUNT APPLICATION

CUSTOMER INFORMATION (PERSONAL NAME NOT COMPANY)
FULL NAME: _____ DOB: _____
(Name must be the same as appears on a driver's licence, birth or marriage certificate, passport or other similar official documentation)

BUSINESS INFORMATION
NAME OF THE COMPANY OR REGISTERED ORGANISATION: _____
TRADING NAME (IF DIFFERENT FROM ABOVE): _____
COMPANY NUMBER: _____
POSTAL ADDRESS: _____ POST CODE_____
DELIVERY ADDRESS: _____ POST CODE_____
IS YOUR REGISTERED COMPANY ADDRESS DIFFERENT FROM ABOVE? (please tick one) Yes ( ) No ( ) If "Yes" please specify
_____
TRADING HOURS: _____
ANY SPECIAL DELIVERY INSTRUCTIONS: _____
Landline: _____ Mobile: _____
Orders Contact Name: _____ Email: _____
Accounts Contact Name: _____ Email: _____
Tick if you do not wish to receive marketing via email ( ) *Includes promotions and new products, usually once per month*
BUSINESS CATEGORY ☐Retail (physical) ☐Retail (online) ☐Animal Behaviouralist ☐Animal Welfare ☐Boarding/Daycare ☐Grooming ☐Pet Transport ☐Registered Breeder ☐Other (specify): _____
BUSINESS TYPE (please tick one) Sole Trader ( ) Partnership ( ) Company ( ) Trust ( ) Other ( ) please specify
SOLE TRADERS APPOINTED SERVICE AGENT (This is compulsory for Sole Traders) *For example: external accountant*
NAME OF SERVICE AGENT: _____ ADDRESS: _____

TRUSTEES' / PARTNERS' / DIRECTORS
(Name must be the same as appears on a driver's licence, birth or marriage certificate passport or other similar official documentation)
FULL NAME: _____ DOB: _____ HOME PHONE: _____
FULL NAME: _____ DOB: _____ HOME PHONE: _____
FULL NAME: _____ DOB: _____ HOME PHONE: _____
FULL NAME: _____ DOB: _____ HOME PHONE: _____

CREDIT REFERENCES: Complete this section only if you are applying for credit terms. Do not use utility suppliers, banks, landlords, local authorities or residential mortgage providers.

NAME: _____ ADDRESS: _____ PHONE: _____
NAME: _____ ADDRESS: _____ PHONE: _____
NAME: _____ ADDRESS: _____ PHONE: _____

Important: If you are applying for credit terms, you must also complete the Deed of Guarantee and Indemnity section on page 6 of this form.

Declaration by Signatory **(NB Privacy terms do not bind non-signing partners, trustees or other members of unincorporated bodies. In order that Kong's may obtain, disclose or hold information about any person, that person must consent personally)**

1. I (name and position)_____warrant to Kong's that I am authorised to enter into this contract on behalf of the customer and agree that this application form and terms of trade apply with respect to the supply of goods and services to the customer by Kong's and
2. I have read the terms of trade, which accompany this application and agree that these are the terms, which will apply to the supply of all goods by Kong's to the customer.
3. I for myself and for the customer acknowledge and consent to the personal information provided in support of the application (whether in this document or otherwise) being held by Kong's and to it being used by it for all or any of the following purposes:
(a) Determining eligibility and terms for the provision of credit to the customer,
(b) Supplying the customer with goods and or services including information and offers relating thereto by way of any delivery service, and commercial electronic messages.
(c) Enforcing debts and other legal obligations.
4. I for myself and for the customer hereby authorise all persons to provide Kong's and its successors and assigns with such information as it may at any time request about me and about the customer with respect to all or any of the purposes listed above or any directly related purposes. I acknowledge that I am entitled to request access to, and (if required) correction of, any personal information held about me by Kong's.
5. I for myself and for the customer warrant that the information given in this application is, to my best knowledge, information and belief, correct.
Signed for the signatory and the customer:

_____ _____
Signature Date

Print Name clearly _____

In the presence of:

_____ _____ _____
Signature of Witness Occupation of Witness Address of Witness

Print Name clearly _____

TERMS OF TRADE AND SECURITY AGREEMENT– Kong's (NZ) LIMITED

APPLICATION OF THIS CONTRACT

This contract forms the basis on which Kong's supplies goods and services to the customer. Each such supply shall be effected pursuant to the terms of this contract and this contract overrides the terms of any conflicting customer order or prior Kong's agreement unless in either case there is specifically an agreement otherwise in writing signed by an authorised representative of Kong's after the date hereof.

Any quotation, invoice warranty or other document from Kong's evidencing or describing any products subject to this agreement is incorporated into and forms part of this contract. If the customer obtains products through or on behalf of another legal entity, or organisation, the customer shall remain personally liable until Kong's has received and granted a fresh formal application for credit from the new entity.

DEFINITIONS

"Kong's" means Kong's (NZ) Limited and its successors and assigns.

"Back-order" in relation to goods" means that goods ordered by Kong's are reserved for a customer before receipt by Kong's by allocating them to that customer's account.

"Customer" or "the customer" means the person shown as such in the section headed "Customer Information" and its successors and assigns.

"Person" includes an organisation as defined in the Personal Property Securities Act 1999.

"Claim" includes any claim for any form of damages, compensation or remedy including a claim for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from any breach of Kong's' obligations under this contract or from any cancellation of the contract; or from any negligence, misrepresentation, act or omission by Kong's or its employees, agents or contractors.

"Default" means:

a) The customer requests Kong's not to deliver ordered goods or fails to collect ordered goods or accept them on delivery or

b) The customer fails to comply with the terms of this contract; or

c) The customer changes its name or address without first giving Kong's five working days written notice of its intention to do so and of the replacement name or address or

d) The customer causes or allows some or all of the goods to be or become liable to be destroyed, damaged, endangered, disassembled, re-moved (other than as part of equipment installed or supplied by the customer in the normal course of its business for or to its customers) or concealed from Kong's or the goods become liable to seizure by another creditor or

e) The customer allows another security interest in the goods to be registered or sells or otherwise disposes of the goods other than in the ordinary course of the customer's business; or

f) The customer allows any judgment against it to remain unsatisfied for 7 days or suffers any distress against the goods or

g) The customer commits an act of bankruptcy; or

h) The customer enters into any composition or arrangements with its creditors; or

i) If the customer is a limited liability company:

(1) The customer does anything which would make it liable to be put into liquidation; or

(2) A resolution is passed or an application is made for the liquidation of the customer; or

(3) A receiver or statutory or official manager or an administrator is appointed over the customer or over all or any of the customer's assets.

"Discount," means an agreed reduction in the price of goods from that shown in Kong's current price list

"Goods" means (a) pets of all types including birds, fish, reptiles, insects, and mammals and (b) all types of paper, digital and other electronic publications, food and equipment about or for the caging, housing, storage, transport, identification, feeding, care, health, comfort, grooming, clothing, restraint, exercise, training, study, entertainment of pets and the security, cleaning, ornament and decoration of their environment; and (c) equipment and inventory for the advertising, presentation, sale or lease of pets or goods associated with pets; and without limitation (d) includes pumps, filters, nets, traps, tanks, lights chemicals, stones, gravel, stands, shelving and all types of pet food and all other goods which, in each case, are supplied by Kong's to the customer or which are attached to goods supplied by Kong's.

"Including" is not a word of limitation.

"The price" means the price of products quoted by Kong's and accepted by the customer or, if there is no accepted quotation, the price shown in Kong's current price list or, if there is no price so shown, the price shown in Kong's' invoice for those products.

"Products" means goods as defined and services including training and advice on goods supplied by Kong's.

Words and expressions used in this contract have any meanings (if any) -given to them in the Personal Property Securities Act 1999 ("PPSA") and to remove doubt the parties acknowledge that Kong's' retention of title to goods (although a security interest) is not a mortgage as defined in the Property Law Act 2007. In this contract, the singular includes the plural and vice versa and any gender includes other genders.

ORDERS

1. The customer must pay on receipt of Kong's' invoice for all products:

(a) Ordered by means of email, website, or phone call from any email or phone number of the customer or from the number of any cell phone used by any employee of the customer; or

(b) Ordered in person with a Kong's employee or representative by the customer or any employee or representative of the customer; or

(c) Ordered on any document (i) containing the customer's letterhead or (ii) usually used by the customer to order.

(d) Received by the customer which, if not ordered by the customer, are not within 5 working days of receipt returned to Kong's in the same condition as that in which they were delivered and in respect of which the customer has within 2 working days of receipt advised Kong's that the products were not ordered.

2. The customer is bound to pay the price from the time that Kong's begins activity to manufacture, or supply, or obtain and supply the products or from the time that Kong's formally accepts the customer's order

QUOTATION AND PRICE

3. A quotation shall remain valid for 30 days from its date or, if it is undated, from the date it is received by the customer, unless another expiry date is specified.
4. If product is required that is not provided for in the quotation, the customer must pay the price in the price list.
5. A price may be increased by the amount of any increase in the cost of supply of product which is beyond the control of Kong's and which occurs between the date of an order and provision of the product to the customer.
6. The price shall be increased by the amount of any GST and other applicable taxes and duties and all costs under this contract relating to transportation, storage and insurance if such are not expressly included in any quoted or agreed figure.
7. Acceptance of a quotation is deemed to be an order for the goods.
8. Any discount will be instead of and not in addition to any other reduction from the price in the price list.

PAYMENT

9. Unless Kong's grants credit, goods must be paid for before they leave Kong's' premises. If Kong's grants credit, the customer shall pay the price immediately on presentation of Kong's' invoice but provided that the customer is not otherwise in breach, Kong's will not exercise any rights or remedies for late payment of any invoice if customer pays no later than the 20th of the month following the date shown on that invoice without deduction whether by way of set-off, counter-claim or any other equitable or legal claim.
10. Kong's may terminate or suspend the grant of credit or vary the terms upon which it grants credit at will by notice to the customer, even if an order has been accepted by Kong's. If the grant of credit is terminated or suspended, the customer shall pay any outstanding debt forthwith and pay for any existing order in advance.
11. Receipt of an electronic payment shall not be deemed to be payment if the payment is dishonoured, cancelled or invalidated.

The customer must advise Kong's of any payment by direct credit (other than internet banking) by advising it of the date of deposit, payment amount and the customer's name and contact person.

12. If the customer requests invoices to identify specific delivery addresses for the occupants of which the customer pays for goods, Kong's will issue invoices in such manner but the customer will remain liable for the debt represented by such invoices.

RISK AND DELIVERY

13. Risk of any loss, damage or deterioration of or to goods passes to the customer when:
(a) Kong's places the goods for collection by the customer at Kong's' premises or
(b) Kong's delivers the goods to the customer or
(c) If Kong's is to deliver, the customer fails to accept the goods or requests delayed delivery after the goods have left Kong's' premises.
14. Unless otherwise agreed, Kong's will arrange delivery of the goods to the customer. Kong's intends to use all reasonable efforts to do so on any delivery date specified. However, subject to there being any specified delivery time agreed in writing by the parties in advance of delivery, any time stated for transport or delivery of the goods by Kong's is an estimate only and Kong's shall not be liable to the customer nor to any other person for any delay in transport or delivery.
15. Any under-delivery is to be notified to Kong's in writing within 24 hours of receipt.

16. If a customer has requested that goods be held on back-order the customer must advise Kong's whether those goods are to be delivered to the customer on receipt by Kong's or held until delivery of the customer's next regular order. If they are to be delivered on receipt, the customer will pay the delivery costs of those goods.
17. If the customer fails to uplift goods when placed for collection or accept goods on delivery or at such other time as the parties agree the customer shall pay the costs of storing and preserving the goods until such time as the customer uplifts or accepts the goods. If Kong's invoices the customer for payment the customer must pay. Alternatively Kong's may cancel the order without liability to Kong's but the customer must pay any loss suffered by Kong's on resale and must pay in full for any goods not sold within three months of the failure to collect or accept the goods.

SECURITY INTEREST AND CONTRACTING OUT OF THE PPSA

18. Kong's retains title to goods (including goods paid for) supplied to the customer until all goods supplied to date are paid for in full. As soon as and from such time that all goods supplied to date are paid for in full, the customer shall own all such goods. In addition, the customer grants to Kong's a security interest in all of the customer's present and after-acquired property as security for the customer's debt and obligations and for the avoidance of doubt this sentence applies to goods supplied in future and to "future advances" as that expression is defined in the PPSA. Section 96(1) of the Property Law Act 2007 does not apply.
19. Kong's may appropriate, allocate or re-allocate amounts received from the customer in any manner it determines, notwithstanding any purported appropriation or allocation by the customer.
20. **Seizure and Sale** If after any due date money remains owing to Kong's, Kong's (acting as the customer's agent) may enter the customer's premises or the place where the goods or any other collateral are and seize the goods or other collateral and may dispose of them as Kong's sees fit and to apply any proceeds or the value of the goods at the time of seizure towards the debt or the cost of satisfying the obligation. The customer hereby irrevocably authorises Kong's to enter the premises of the customer to locate and seize any goods or other collateral.
21. The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement relating to any security interest under this contract and further waives its rights under sections 120(2), 121, 125, 129, and 131 of the PPSA and further agrees that nothing in sections 114(1)(a), 133 & 134 of that Act shall apply to this contract or the security under it.

WARRANTIES

22. This contract assumes that products are required by the customer for business purposes. If they are so required the customer agrees that the Consumer Guarantees Act 1993 ("the CGA") does not apply. If the customer on-sells any goods then it shall be a term of the sale contract that the CGA does not apply if the goods are being acquired for business purposes. The customer indemnifies Kong's against any liability or cost incurred by Kong's under the CGA as a result of any breach by the customer of the obligations contained in the contract.
23. On the basis that the CGA does not apply:

(a) In the event that Kong's' supplier has provided a warranty with respect to the goods, Kong's will endeavour to enforce such warranty against Kong's' supplier and will hold the benefit of any such warranty in trust for the buyer but Kong's shall not be required to make any claim through any Court or tribunal for the enforcement of such warranty. However, in order for Kong's to so assist the customer, the customer must have any warranty card of Kong's' supplier and carried out any other of that supplier's requirements and be able also to prove the time and date of purchase from Kong's.
(b) If there is no warranty provided by Kong's supplier, Kong's warrants with respect to goods (a) fitness for purpose notified to Kong's in writing, (b) safety, (c) durability and (d) reliability; all for one year after the customer sells the goods to a customer in its normal course of business or for two years after the goods are delivered to the customer, whichever comes earlier. Kong's provides no other warranty.
(c) The customer may reject any goods which are defective, damaged on delivery or which, before leaving Kongs' premises, are older than three months before their "best by" date. Such goods shall at Kong's' discretion be repaired, or replaced or the price refunded but the cus-tomer will be entitled to no other remedy and Kong's will not be liable if the goods are not installed or are not used in accordance with manufacturer's or Kong's' specifications or are used in a manner for which they are not designed or are improperly modified or not maintained as recommended by the manufacturer or by Kong's.
(d) The customer's right to reject goods per the last sub-paragraph is subject to the condition precedent that the customer notifies Kong's in writing within 24 hours following delivery, identifying the goods and providing the invoice number and date, the code, and the alleged defect in or damage to the goods and by Kong's being given reasonable opportunity to inspect the goods before return. In that case, Kong's will provide a "Credit/Service form number for the goods to be returned. Henceforth the parties will use that number in referring to the goods returned or to be returned.
(e) Other than pursuant to the limited warranty provided in this agreement, Kong's shall not be liable to the customer or any other person for any claim and, in any event, Kong's' liability under any claim, including a claim under sub-paragraph (b), shall not exceed the price of the products. Any written warranty shall become a term of this agreement. The customer must indemnify Kong's against the costs of any unsuccessful claim by the customer including actual legal costs and disbursements charged on a solicitor and own client basis and Kong's' administration managerial and other internal costs.
(f) If the customer alleges that before leaving Kong's premises, goods were defective or damaged and Kong's determines that they are not, the customer will pay to Kong's the cost of such determination including time and travel costs of any Kong's staff member or contractor.
(g) Kong's has no obligation to accept (i) the return of any goods for reasons other than pursuant to the warranty in sub-paragraph (b) or that before leaving Kongs' premises they are defective, damaged or older than three months before their "best by" date or (ii) cancellation of any order where the customer is bound to pay under paragraph 2 and in any event will not give credit for any goods returned unless the customer has first complied with sub-paragraph ((d)) of this paragraph. If Kong's accepts the return of goods other than pursuant to sub-paragraphs (a), (b) or (c) of this paragraph it may charge a fee based on the net price of the goods to the customer and number of days from the date of the invoice, namely, 10% for under 30 days, 25% for 30 days to 119 days and 50% for 120 days and more.
(h) If a customer wishes to return goods other than under sub paragraphs (a), (b) or (c) of this paragraph, they must be returned in their original packaging and that packaging must be unmarked and undamaged.
(i) Kong's may provide advice or information including manufacturers' manuals by way of assistance or service to the buyer with respect to the goods or their application or use but Kong's provides such advice and information in good faith only and without being liable on any claim as a result of any inaccuracy.

DEFAULT

24. If the customer defaults, Kong's may suspend or terminate the contract and in any event any waiver of rights for payment by 20th of the month pursuant to paragraph 9 hereof shall cease automatically. In addition if the customer does not pay the amount of any invoice by the due date:
(a) Default interest may be charged at the rate of 3% per month compounding from the date of the invoice until payment in full so that such interest will continue after judgment and the right to interest shall not merge with the judgment.
(b) Kong's may disallow any discount including discounts already provided for in any invoice.
(c) The customer must pay to Kong's upon demand the cost of any legal fees charged to Kong's in pursuit of any unpaid debt of the customer and such fees may include additional fees or commissions charged by debt collecting firms and actual legal costs and disbursements charged on a solicitor and own client basis. If Kong's sues the customer, service of any document will be deemed to be effected on the customer if that document is left at the address shown as the customer's business address or home address or registered address or with any service agent appointed by the customer. The customer must also pay to Kong's all costs and disbursements incurred by Kong's in the protection or enforcement or the attempted protection or enforcement of the security interest created by this agreement or the priority or registration of that security interest. The customer must also pay Kong's' administration managerial and other internal costs in enforcing this contract. The customer agrees that the costs and disbursements payable under this clause are contractual damages.
(d) Kong's may also (whether or not it has exercised any other right) appoint a person to be a receiver of all or any of the goods. In addition to and without limiting affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the goods as if the receiver has absolute ownership of the goods.
(e) The customer, if a sole trader, irrevocably appoints the person shown as an agent for service for the purposes of section 359 of the Property Law Act 2007.

SET OFF & ASSIGNMENT

25. Kong's may apply (at its absolute discretion and without prior notice) all or any part of any credit balance with Kong's towards satisfaction of any amount owing (whether or not due for payment) by the customer to Kong's. Kong's may so apply such credit balance even if any amount is contingently due or at the time is unquantified.
26. The customer may not assign any debt or other obligation, which Kong's owes to it and must not to attempt such an assignment.

GENERAL

27. Kong's may exercise all or any right, power or remedy at any time and failure to do or delay in doing so shall not constitute a waiver unless Kong's grants it in writing and a continuous breach shall only be waived if Kong's specifies that the waiver is continuous.

28. If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected

29. This agreement is governed by New Zealand law and the parties irrevocably submit to the jurisdiction of the New Zealand courts. However, this does not limit Kong's' rights to enforce this agreement against the customer or any judgment against the customer or against the customer's real and personal property in any country where the customer or that property may be.

30. The customer consents to Kong's sending commercial electronic messages to the customer at any electronic address provided in the application or to such other electronic address as the customer provides to Kong's from time to time.

DEED OF GUARANTEE AND INDEMNITY

This deed made between Kong's (NZ) Limited together with its successors and assigns referred to as "Kong's") and the person or persons named below together with his successors called "the guarantor")

Background

A Kong's is to supply or supplies goods, services or both to the customer named as such on page one of the attached application for credit and trade terms (together with its successors referred to as "the customer")

B The guarantor has agreed to guarantee payment of all sums, which the customer has agreed to pay to Kong's and the performance of the terms and conditions of sale of the goods and services between Kong's and the customer ("the terms of trade").

This deed witnesses and the parties agree

(a) In consideration of Kong's supplying goods and services to the customer the guarantor guarantees to Kong's payment of the price charged to the customer and payment of all money and the performance of all obligations provided for in the terms of trade.

(b) The guarantor acknowledges that goods and services are and will be supplied to the customer at the request of the guarantor and that Kong's would not supply on credit terms if the guarantor did not sign this guarantee and indemnity.

(c) The guarantor shall be liable for the price of all goods and services and payment of all moneys provided for by or due under (and for the performance of) the terms of trade as if the guarantor were a principal debtor to Kong's and shall be liable to pay and perform upon demand by Kong's and in any event, as a separate obligation, shall indemnify Kong's in respect of any failure by the customer to pay or perform. Kong's may demand payment from any guarantor without first making demand on the customer or any other guarantor;

(d) Where this Deed is signed by more than one person as guarantor the expression "the guarantor" shall include all such persons and the liability of the guarantor under this Deed shall be the joint and several liability of such persons and any demand made by Kong's to any one or more of the persons so jointly and severally bound shall be deemed to be a demand made to all such persons.

(e) The guarantor shall not be released from the guarantor's obligations under this deed by any lack of legal capacity or other reason, which would result in the terms of trade not being enforceable against (or any moneys not being recoverable from) the customer or (where more than one persons signs as guarantor) any other guarantor. Without limiting the generality of the last sentence, no waiver, giving of time, indulgence, compromise, failure to or delay in exercising remedies, variation of security, variation of the terms of trade nor other dealings by Kong's with the customer or (where more than one persons signs as guarantor) any other guarantor nor any failure to register or validly register personal property security interest nor the bankruptcy or liquidation of the customer shall release the guarantor from any obligations and the guarantor waives all defences which might be available to a surety;

(f) The guarantor's rights of subrogation and of indemnity against the customer and (where more than one persons signs as guarantor) contribution against any other guarantor shall not arise until Kong's has received payment (from the customer or other guarantor as the case may be) in full of all moneys owed to Kong's on any account whatsoever.

(g) If any payment from the customer is set aside or avoided for any reason whether by statute or otherwise then (i) such payment shall be deemed not be have been made; and (ii) the liability and obligations of the Guarantor shall be the same as if no payment had been made and (iii) if this deed has been discharged, the Guarantor shall notwithstanding be liable for such payment.

(h) Kong's shall not be bound to dispute or influence any claim or decision by the Official Assignee in the event of the borrower's bankruptcy, entry into the No Asset Procedure or becoming subject to a Summary Instalment Order under the Insolvency Act 2006 nor any claim from the liquidator of the customer.

(i) This guarantee is for the benefit of and may be enforced by any person for the time being entitled to payments of the monies due under the terms of trade and an assignment of Kong's rights under the loan agreement shall not release any guarantor from liability

(j) This guarantee shall continue in force notwithstanding that the customer may not be in debt or may be in credit with Kong's from time to time and further shall remain in force until discharged in writing. Kong's may delay providing a discharge until satisfied that any payment is unlikely to be made void but in any event any discharge shall be conditional on no payment to Kong's subsequently being avoided or set aside on the liquidation or bankruptcy of the borrower.

(k) If Kong's files proceedings against the guarantor pursuant to this guarantee, paragraph 24c of the attached trade terms shall apply to the guarantor as if the guarantor were the borrower.

(l) Where the context requires one the singular shall include the plural and vice versa and one gender shall include other genders.

Who completes this section? The person providing the personal guarantee, such as a business owner, director, partner or trustee. An external guarantor is not required.

Executed as a deed this _____day of _____20_____

Signed by the guarantor

_____
Signature

Print Name clearly _____

In the presence of:

_____ _____ _____
Signature of Witness Occupation of Witness Address of Witness

Print Name clearly _____

Signed by the guarantor

_____
Signature

Print Name clearly _____

In the presence of:
(any independent person)

_____ _____ _____
Signature of Witness Occupation of Witness Address of Witness

Print Name clearly _____