



ACCOUNT APPLICATION FORM

ENTITY DETAILS:

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

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

Trading as: Postal Address:

Physical Address: Telephone:

Nature of Business:Years in Business:

Contact Name & Position for Sales:

Phone number & Email for Sales:

Contact Name & Position for Accounts:

Phone number & Email for
 Accounts:.....

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

1: Address: Date of Birth:

2: Address: Date of Birth:

IF LIMITED LIABILITY COMPANY - Address of Registered Office:

Date of Incorporation: Incorporation No:

PERSONAL GUARANTEE : From a Partner, Sole Trader or a Company Director.

I..... (Print Name), of

.....(Address)

.....(Occupation)

in consideration of you granting a credit account to the Client, HEREBY GUARANTEE, as a principal debtor, with all my present and future assets, the prompt payment of all monies payable by the Client to you.

SIGNATURE _____



DATE _____

Witness name: Occupation:

Signed Date Address

TRADE REFERENCES			
Company	Contact Name	Phone Number	Account open since

I/We certify that I/We are authorised by the Client to make this application.

I/We also permit Formshore Limited to obtain credit information as it feels necessary in relation to this application.

I/We have read, understood and agree to the Client being bound by the Conditions of Hire and Sale set out below.

PRINTED NAME _____ SIGNATURE _____

POSITION HELD _____ DATE _____

1. HIRE AND SALE OF EQUIPMENT

- a) Formshore agrees to hire and/or sell the Equipment to the Client and the Client agrees to hire and or purchase the Equipment on the terms set out in these Conditions.
- b) These Conditions shall apply to all Sales and/or Hires made by Formshore to the Client from time to time.

2. DEFINITIONS AND INTERPRETATION

“Client” means the person or entity named as Client on these Conditions and, where applicable, includes the employees, contractors, agents and subcontractors engaged by the Client to purchase and/or hire Equipment from Formshore.

“Conditions” means these conditions of hire and sale.

“Equipment” means the scaffolding, falsework, formwork and other equipment Formshore supplies to the Client, including Hire Equipment and Sales Equipment.

“Formshore” means Formshore Limited.

“GST” means goods and services tax under the Goods and Services Tax Act 1985.

“Hire Equipment” means Equipment hired by the Client under a contract for hire entered into between Formshore and the Client.

“Hires” means all current and future hires of Hire Equipment from Formshore to the Client.

“Invoices” means all invoices prepared by or on behalf of Formshore which are issued to the Client from time to time.

“PPSA” means the Personal Property Securities Act 1999.

“Safety Guidelines” means all relevant safety guidelines applicable to the Equipment.

“Sales” means all current and future sales of Equipment from Formshore to The Client.

“Sales Equipment” means Equipment purchased by the Client under a contract for sale entered into between Formshore and the Client.

3. CHARGES FOR HIRES AND/OR SALES

- a) Rental rates for Hires and/or prices for Sales are as set out in Formshore’s written quote or, if not quoted in writing, as set out in Formshore’s price list in force from time to time.
- b) All rates for Hires and/or prices for Sales are ex Formshore’s Wellington depot unless otherwise agreed in writing and exclude the cost of transport.
- c) All Sales and Hire quotes are valid for 30 days but thereafter may be adjusted in accordance with Formshore’s standard price list.
- d) Prices for Hire and Sale are quoted exclusive of GST and the Client agrees to pay Formshore any GST and any other taxes, duties or other levies applicable in respect of the Equipment or other services provided by Formshore. All GST shall be payable on the due dates for payments relating to any Equipment or services as set out in the relevant Invoice(s).
- e) Charges for Hire Equipment are calculated daily or weekly, with a minimum hire charge of 2 weeks. Weekly charging is based on a 7 day week.
- f) Hire is charged as soon as the Equipment is collected from our Wellington depot until the day it is returned to our Wellington depot. The day of collection of Hire Equipment and the day of return of Hire Equipment will both be charged as whole days. There will be no reduction to the charge for weekends, site closure, holidays, inclement weather or for any other reason beyond Formshore’s control including (without limitation) strikes, lockouts, cessation of labour, transport delays and Government interference or control.
- g) If Formshore delivers or collects the Equipment, then the Client will pay a delivery or collection charge at Formshore’s normal transport rates applicable at the date of delivery or collection as the case may be.
- h) The Client is responsible for payment of all costs relating to freight of Equipment unless otherwise agreed with Formshore beforehand in writing. Formshore may also charge for transport costs in relation to collection of any Equipment which is overdue to be returned to Formshore.
- i) The Client will be liable for payment of all engineering reports and certification or other inspections required in the course of any contract undertaken by the Client, unless specifically agreed as part of Formshore’s services provided under a written quotation.

4. DELIVERY OF EQUIPMENT

- a) All transport of Equipment to or from the Client is at the Client’s own risk. Any loss occurring in transit which exceeds the hauler’s insurance cover is at the Client’s risk and the Client must ensure that the Client has sufficient insurance cover for any such excess and shall, if demanded by Formshore, produce evidence of such insurance cover. Where Formshore arranges for delivery on the Client’s behalf, the Client is solely responsible for any transportation charge unless otherwise specifically agreed in writing by Formshore. Formshore accepts no responsibility, risk or liability in respect of such transport arrangements which will be made purely to assist the Client.
- b) The Client must supply at its own cost suitable labour and plant to unload the Equipment at the delivery address.
- c) Unless written notice to the contrary is provided to Formshore within seven calendar days of delivery:
 - i) the Equipment delivered will be deemed to be in good condition; and
 - ii) the quantities of Equipment delivered detailed by the Formshore in the relevant delivery advice or Invoice shall be deemed to be correct.

5. TITLE AND RISK

- a) The Hire Equipment is owned by New Zealand Scaffolding Assets Limited (NZSA) and leased by Formshore. Ownership of the Hire Equipment remains at all times with NZSA and the Client shall have no right, title or interest in any such Hire Equipment. The Client agrees not to assign, charge, encumber, mortgage, pledge, sell or otherwise dispose of the Hire Equipment or any part thereof unless authorised to do so in writing by Formshore. Hire Equipment must not be shipped and/or used outside of New Zealand.
- b) Title to all Sales Equipment remains with Formshore or NZSA (and the Client shall have no right, title or interest in any Sales Equipment) until all amounts owing in respect of the Sales Equipment have been paid in full. Until such time, the Client agrees not to assign, charge, encumber, mortgage, pledge, resell or otherwise dispose of the Sales Equipment or any part thereof without immediately accounting to Formshore for such portion of the proceeds as remains owing to Formshore.
- c) For the avoidance of doubt, funds paid to Formshore by the Client in relation to amounts owing in respect of Sales Equipment shall be applied proportionally (based on the purchase price of the relevant Sales Equipment) to all Sales Equipment purchased by the Client and not paid in full, so that no part of the Sales Equipment shall be considered the property of the Client until Formshore has received full payment of all amounts owed to Formshore by the Client.
- d) The risk of any loss or damage to the Equipment due to any cause whatsoever shall be borne by the Client from the Equipment being made available for pick up and, in the case of Hire Equipment, until it is returned to the Formshore premises.

6. PAYMENT TERMS AND CREDIT ARRANGEMENTS

- a) The Client will pay for Hire Equipment and Sales Equipment according to the payment terms specified by Formshore on the relevant Invoice or, if no payment time is specified, by the 20th of the month following date of the Invoice.
- b) The Client agrees that if the Client has provided Formshore with credit card details or a direct debit authority, immediately on invoicing the Client, Formshore may charge the credit card or action the direct debit as payment for the Invoice.
- c) The Client may not withhold any sum, including "retentions" withheld by other parties from the Client, from payment to Formshore.
- d) Price concessions are given on the basis of full and on-time payment and any failure by the Client to comply with payment terms will result in price concessions being null and void and full list prices being automatically applicable from the commencement of the Hire or Sale.
- e) Formshore may decline or revoke any credit application at any time and for any reason, and may require any further security it deems necessary prior to the granting or reinstatement of any credit account or the supply of any Equipment including, where applicable, and without limitation, the provision of supporting guarantees, general security agreements, specific security agreements and/or performance bonds.

7. RETURN OF HIRE EQUIPMENT

- a) The Client will be responsible for returning all Hire Equipment to Formshore, and for providing Formshore with a delivery note in which all Hire Equipment returned is itemised.
- b) Returns of Hire Equipment must be made during Formshore's normal business hours and to Formshore's local depot or, if no local depot, to the main depot in Wellington, unless prior arrangements have been agreed with Formshore in writing.
- c) If Formshore collects the Hire Equipment, the Client will be responsible for, and will provide all assistance required by Formshore (including the right to enter any premises or work site where the Hire Equipment may be located) to load and return all Hire Equipment to Formshore.
- d) Upon return of the Hire Equipment, Formshore will check the quantity and condition of the Hire Equipment. If Formshore finds any discrepancy with the quantity and condition of the Hire Equipment, Formshore will advise the Client and make the Hire Equipment available for three business days for the Client to check the quantity and condition of the Hire Equipment. If the Client fails to check the Hire Equipment within three business days of Formshore's advice of a discrepancy then Formshore's count and assessment shall be deemed conclusive proof of the quantity of Hire Equipment returned and its condition at the time of return.

8. LOSS OR DAMAGE OF EQUIPMENT

- a) Prior to taking delivery of any Hire Equipment and/or Sales Equipment, the Client must, at the Client's own cost, arrange insurance cover with a reputable insurer which provides for the full replacement value of the Hire Equipment and/or Sales Equipment. If requested by Formshore, the Client shall immediately provide evidence of the existence of such insurance, noting Formshore and/or NZSA's interest as a secured party. Proof of insurance is not required for Sales Equipment where the purchase price has been paid in full.
- b) The Client is responsible for returning the Hire Equipment in a clean and usable condition.
- c) When the Client returns the Hire Equipment in a worse condition than can be accounted for by fair wear and tear, Formshore may charge the Client for cleaning, reconditioning, renewing or replacing the Hire Equipment as Formshore considers necessary in its sole discretion.
- d) If the Client fails to return the Hire Equipment to Formshore in accordance with these Conditions, or Formshore receives notice that the Hire Equipment has been lost, or the Client is unable to produce any item after reasonable notice from Formshore, the Hire Equipment will be treated as "Lost Equipment". Formshore will invoice the Client for any item of Lost Equipment for a sum equal to Formshore's standard sale price of the item of Lost Equipment at the time of preparation of the Invoice for Lost Equipment. The hire charge for that item of Lost Equipment will continue to accrue until the Client pays the sale price for the item of Lost Equipment.

9. SAFETY GUIDELINES AND INSTRUCTION FOR ASSEMBLY AND USE

- a) The Client is responsible for the safe use of the Equipment and the Client must employ staff or contractors with the necessary skills and experience to use the Equipment in a safe manner.
- b) The Client must follow any specific designs issued by Formshore (including any conditions) and the manufacturer's instructions before undertaking erection, dismantling and use of the Equipment.
- c) All details or representations made in any specific designs issued by Formshore, the manufacturer's instructions or other publications shall only apply to sole use of the Equipment supplied by Formshore. The Equipment is designed, produced and configured for use with other

Equipment of the same specification only and not for use with products of other suppliers. Formshore accepts no liability for any loss, or damage suffered by the Client in the event the Client chooses to mix the Equipment with those of other suppliers.

- d) The Client must always erect, dismantle and use the Equipment in compliance with specific structural requirements, local circumstances and the specific requirements of public authorities, industry guidelines or the law. It is the Client's duty to be informed about all technical and statutory requirements for the structural design, structural stability, tying, application or use of the Equipment.

10. PERSONAL PROPERTY SECURITIES ACT

- a) The Client acknowledges that the Hire of Equipment and any Sales of Equipment not paid in full creates a security interest (as defined in the PPSA) in favour of NZSA and Formshore. In addition to the security interest granted in respect of the Hire Equipment and any Sales Equipment not paid for in full, the Client also grants a security interest in all of the Client's rights, title, benefit and interest in all present and after acquired equipment supplied by Formshore (whether that equipment has been paid for in full or not) in order to secure the Client's due performance and observance of the Client's obligations to Formshore. The Client will, at Formshore's request, promptly execute any documents, provide all necessary information and do anything else required by Formshore to ensure that the security interest is perfected in accordance with the PPSA with such priority as Formshore requires, including executing any variations to these Conditions.
- b) The Client grants Formshore an irrevocable licence to enter upon any site on which the Equipment is located for the purposes of retaking possession of the Equipment or enforcing its security interests granted by these Conditions and the Client expressly indemnifies Formshore from any claims, proceedings, loss, damages, costs or liability suffered or incurred by Formshore as a result of Formshore entering upon any such site.
- c) The Client waives the Client's rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA The Client will have no rights under sections 114, 116, 120, 121, 125, 126, 127, 129 and 131, 132 and 133 of the PPSA, including the right to receive any notices. The Client agrees if applicable that Formshore may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of goods under sections 120–123 will immediately extinguish any rights and/or interests the Client may have in the goods and that Formshore may allocate any monies it receives to debts, charges and expenses in any priority Formshore determines.
- d) The Client agrees that the Client's account may be debited with the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

11. LIMITATION OF FORMSHORE'S LIABILITY

- a) Formshore accepts no responsibility for any loss or damage arising directly or indirectly:
- i. from the effect of wind forces and other forces of nature on the Equipment;
 - ii. from the erection, dismantling or use of the Equipment by the Client;
 - iii. from the failure to obtain or follow professional advice in relation to the erection, dismantling or use of the Equipment;
 - iv. from the failure by the Client to provide accurate, sufficient or current specifications, measurements, loadings or drawings; or
 - v. from any use of the Equipment in conjunction with any other products not supplied or previously approved by Formshore.
- b) The Client indemnifies Formshore for all claims for injury to persons and/or damage to property caused by, or in connection with or arising out of, the use of the Equipment and for all costs and charges in connection with such claims whether arising under statute or common law.
- c) Any drawings, designs or specifications which Formshore provides to the Client in connection with the Equipment do not constitute a warranty or guarantee on the practicability, efficacy or safety of that Equipment. Formshore will not be responsible for the cost of any additional work caused by defects in such drawings, designs or specifications.
- d) Formshore will not be liable for failure to deliver the Equipment on a specific date or within a specified time from receipt of the order.
- e) Formshore will not be liable for any consequential loss or damage caused directly or indirectly by the Equipment or any defects in any drawings, designs or specifications which Formshore provides with the Equipment.
- f) Formshore is not liable for any damage or loss whatsoever arising directly or indirectly from the on-supply of Equipment to third parties and the Client shall indemnify Formshore in respect of any such claim.

12. FAIR TRADING ACT AND CONSUMER GUARANTEES ACT

The Client is acquiring the Equipment solely for business and commercial purposes, and the parties acknowledge and agree that: (i) the parties are in trade; (ii) the Equipment is both supplied and acquired in trade; (iii) the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the Fair Trading Act 1986 ("FTA"); and (iv) all warranties, conditions and other terms implied by the Consumer Guarantees Act ("CGA") or sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the FTA are excluded from these terms and conditions to the fullest extent permitted by law. The parties hereby expressly contract out of section 12 (guarantee as to repairs and spare parts) of the CGA and Formshore does not undertake in accordance with that section that repair facilities and spare parts will be available for the Equipment. The parties agree and acknowledge that the exclusions contained in this clause are fair and reasonable.

13. DISPUTE RESOLUTION

- a) The parties agree that any dispute arising out of, or in connection with, these Conditions will be resolved in accordance with the following dispute resolution procedure.
- b) If direct discussion and negotiation between the parties fails to resolve the dispute then the parties will, where the dispute is within its jurisdiction, apply to the Disputes Tribunal for resolution of the dispute. The parties hereby agree that the jurisdiction of the Disputes Tribunal to determine the dispute is extended to the maximum extent permitted by law.
- c) If the dispute is outside the jurisdiction of the Disputes Tribunal then the dispute will be resolved by arbitration under the Arbitration Act 1996 by a single arbitrator agreed by the parties. If the parties cannot agree on an arbitrator then the arbitrator will be a person nominated by the

President of the New Zealand Law Society, having regard to the nature of the dispute. The arbitrator will make every effort to minimise the costs and the formalities of the arbitration. Arbitration hearings will be held at the premises of Formshore unless an alternative venue is agreed by the parties. Irrespective of the outcome of the dispute, the parties must pay their own costs incurred in preparing for and attending the arbitration, including the costs of witnesses and representation, and will equally share the other arbitration costs including the costs of the arbitrator.

- d) Nothing contained above shall preclude or prevent Formshore from taking immediate steps to seek urgent injunctive relief before an appropriate Court.

14. PRIVACY ACT

- a) The Client authorises Formshore to collect, retain and use personal information about the Client (the "Information") for the following purposes:
- i. assessing the Client's credit worthiness;
 - ii. administering the financing, whether directly or indirectly, of Sales or Hires and enforcing Formshore's rights under these Conditions or at law;
 - iii. marketing the goods and services provided by Formshore.
- b) The Client authorises Formshore to provide the information:
- i. to any person for the purposes set out above;
 - ii. to credit agencies for the purposes of maintaining effective credit records.
- c) The Client acknowledges:
- i. that the information shall be deemed to be held by Formshore at Formshore's address, notwithstanding that it may be provided to other persons for the purposes described above;
 - ii. that where information can be readily retrieved the Client shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to the payment of a reasonable charge; and
 - iii. that the authorisations set out above are irrevocable.

15. MISCELLANEOUS

- a) The Client at the Client's expense procure the permission of any landowner, lessee, licensee or occupier of any land upon which the Equipment is to be used, stored or erected. The Client will at the Client's expense notify any government or local authority of the erection or use of the Equipment.
- b) If any provision in these Conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- c) The Client must not assign or transfer all or any part of the Client's rights or obligations under these Conditions without Formshore's prior written consent. Formshore may assign any rights or obligations without the Client's approval as well as subcontract any obligations to third parties.
- d) Formshore may vary the terms of these Conditions from time to time by notice in writing to the Client ("Notice"). Any such variation shall take effect from acceptance of the first order for Sale and/or Hire of Equipment by the Client following the date of Notice being sent to the Client.