



# Debtor Management Kit

# Debtor Management Kit

**Introduction** Think of great debtor management as the flip side of great customer service.

Great customer service makes it easier for your clients to buy what you sell, nurtures strong customer relationships, and helps your bottom line.

Great debtor management makes it easy for clients to pay what they owe, maintains good customer relationships, and helps your cash flow.

But unlike customer service, most people in business don't enjoy following up with customers about unpaid debts. It's often pushed to one side, as the team attend to more urgent or more enjoyable tasks. It's often done 'in the cracks' instead of systematically. Poor debtor management can cause a lot of money to be tied up in debtors that could be working for the business more dynamically.

Good debtor management supports healthy cash flow and that helps you drive your business further. The key ingredients? A good strategy, the right tools and having everyone in the team understand what's needed and how important it is.

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# Debtor Management Guide

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## Debtors and your business

If you can avoid giving credit and rely more on cash sales, your business is likely to be better off. But it's not always possible.

When you sell to a customer on trade or consumer credit and you agree to allow the customer to pay you in 7, 14, 30 or however many days' time, that customer is a debtor.

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## Debtors and working capital

Debtors constitute a large (sometimes the largest) asset in the working capital structure.

They are an inevitable consequence of trading on credit. Even if debtors pay strictly within the trading terms, the level of investment in debtors must be regarded as a fixed investment related to the volume of business being done.

This investment needs to be financed by the business.

If your investment in debtors rises above an optimum level related to the volume of credit business, the consequences for your working capital are severe:

- cash flows are hindered because of slower payments and bad debts
- funds required to meet impending liabilities are tied up, unavailable

Put simply: you can have a lot of money tied up in debtors and it's money you could use better elsewhere to keep driving the business forward.

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## Debtors and cash flow

Think about the impact on your cash flow if your debtors paid just a bit sooner than they pay now. Tools such as the [smartAR Group's cash calculator](#) can help you work out how much more cash you could have moving through the business. Good debtor management is more than good housekeeping. It's money in your pocket, rather than in your debtors' ledger.

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## Debtors and creditors

Look at receipts from debtors as the principal source of payment to creditors. This is not to suggest that debtor policy should be correlated with creditor policy, but the two are related.

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## Good debtor management

It can be difficult to ensure that you get paid on time by your customers.

However, good debtor management can make a significant difference to your business:

- reducing the amount of financial risk your business is exposed to
- increasing the likelihood your business will be paid on time
- reducing the chances of cash flow disruptions that bad debts and late payments can cause

Ensure your business is positioned to manage debtors well from the first using the eleven keys to prompt payment.

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## Eleven keys to prompt payment

1. Be up front, explain 'how we do it here'.
2. Quantify fees in advance.
3. Bill regularly.
4. Bill as near as possible to the conclusion of work segments.
5. Where practical present the account to the customer.
6. Provide payment alternatives.
7. Consider fixed fees.
8. Follow up debts systematically and frequently.
9. Explain the value of the work.
10. Build a relationship and demonstrate your value.
11. Consider the fee issue in your customer selection criteria.

## Trading terms

If you make it clear from your earliest contact with your customers what your terms of trade are and when payments are due, it's much easier to contact your customers to remind them to pay your invoice.

You want money owing to you paid with the least possible cost to you. In the case of debt collection costs, the Fair Trading Act requires you to disclose your terms of trade to your customers at the time credit is given. Your terms of trade must include provision for the recovery of collection fees.

If it's appropriate to your business, seek a terms of trade agreement. With an agreement, you have not only disclosed your terms of trade – your customer has also agreed to them.

Ensure your Terms of Trade are clearly identified on the firm's:

- website
- invoices
- statements

Trading terms vary widely depending on the industry and the nature of your business: whether you supply goods and/or services to consumers in a retail environment; to other businesses as a commercial supplier; or a mixture of both.

Make sure your terms of trade are geared to your business.

# Terms of Trade Guide

## Contents

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This guide contains the following tools:

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## What to include

### Drafting terms

When drafting terms of trade for a standard seller of goods or services consider the following:

Terms	Notes
The Parties	Clearly identify the legal entity you are contracting with
Goods and/or Services	An exact description of the nature of the goods and/or services is essential
Price	
Payment	Including whether the customer is liable for late payment or debt collection costs in the event of unpaid invoices
Delivery	
Risk and Insurance	
Reservation of Title	The Consumer Guarantees Act 1993 requires that for a reservation of title clause to be enforceable, it must be fully explained to the buyer, and it is preferable for the buyer to acknowledge this in writing and to be given a copy
Installation	Specify the obligations on the buyer to provide suitable premises, accessibility, services, and amenities
Limits on Liabilities	Consider liabilities for defective products and a policy on refunds. Supplying goods and services to consumers prevents contracting out of the guarantees and remedies implied by the Consumer Guarantees Act.  However, supply of goods or services to businesses is open to parties agreeing in writing that the Act does not apply, allowing the parties to agree on liability
Warranty	
Miscellaneous	For example, indemnity, credit checks, and so on

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## Terms of trade checklist

Work through the checklist to clarify what you want to include in your terms of trade.

Terms of trade differ from business to business and industry to industry. Small businesses providing goods and services often want and can fit terms of trade on an A4 sheet of paper. Terms of trade are often printed on the reverse of invoices. In contrast, the terms of trade for more complex businesses can run to several pages in length.

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## Customer acceptance

It is best that the customer signs acceptance of these terms before the goods or services are provided. If they don't, then they could claim later they did not know about them or agree to them. There are three areas that you can only enforce effectively if the customer has agreed to them:

- interest on overdue accounts: if you intend to charge interest on overdue accounts, customers must be aware in advance of these possible penalties
  - if unpaid invoices progress to debt collection and the collection agency charges collection costs which you pass on to the debtor, customers must know about this when they buy (or order) the goods or services. You have the option to include this in your terms of trade or to display clear notices about collection costs, print notices on credit application forms, or ask the customer to endorse their cheque so they agree to be liable for collection costs if it bounces. A suitable notice might say something like: 'Unpaid accounts will incur late payment fees and collection costs'
  - ownership of goods: the same applies to any clauses about your retaining ownership of the goods until they are paid for
- 

## Keep in mind

It is not enough for a business to simply post out terms of trade to its customers and expect customers to be bound by them. The proper way is to have customers sign their acceptance. This is particularly important where directors or shareholders personally guarantee the performance of their company and where the provider of goods or services wants to be able to charge interest on unpaid monies.

Terms of trade are not generic documents, and they are the subject of considerable litigation.

Think carefully about what terms of trade best suit your business. We've included some sample templates just to get you started. An internet search will reveal companies that can provide readymade terms of trade documents.

However, every business has different areas of exposure to risk, and different needs in a terms of trade agreement. Your solicitor is the best person to draft an agreement suitable for your business, especially if there is any possibility of exposure to litigation through issues such as liability or warranty.

We are happy to go through the checklist and sample templates with you to identify what is most relevant to you so you can best instruct your legal advisor on your needs.

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## Terms of Trade Checklist



<p><b>The Parties – identify the legal entity you are contracting with</b></p> <p><input type="checkbox"/> Corporate</p> <p><input type="checkbox"/> Individual</p> <p>Trust</p>	<input type="checkbox"/>
<p><b>Goods and/or Services</b></p> <p><input type="checkbox"/> If dimensions and specifications are included, are these exact or just estimates? Will there be customary or reasonable tolerances allowed?</p>	<input type="checkbox"/>
<p><b>Price</b></p> <p><input type="checkbox"/> Is the price fixed or can it be varied?</p> <p><input type="checkbox"/> Does the price include or exclude GST?</p> <p><input type="checkbox"/> Is the price a firm quote or only an estimate? If a quote is given, how long does it remain open for acceptance?</p>	<input type="checkbox"/>
<p><b>Payment</b></p> <p><input type="checkbox"/> Is the price payable 'cash on delivery', or is credit given?</p> <p><input type="checkbox"/> If on invoice, how many days after receipt of the invoice must the invoice be paid?</p> <p><input type="checkbox"/> What is the interest rate on credit provided? _____ %</p> <p><input type="checkbox"/> Will penalty interest accrue on an unpaid debt if payment is not made by due date?</p> <p><input type="checkbox"/> Is the debtor to incur the supplier's costs of pursuing the debt?</p> <p>Should a personal guarantee be obtained from the directors of a Company, or the trustees of a Trust?</p>	<input type="checkbox"/>
<p><b>Delivery</b></p> <p><input type="checkbox"/> How, when, and where will goods be delivered? _____</p> <p><input type="checkbox"/> Who pays delivery costs? _____</p> <p><input type="checkbox"/> What are the consequences of late delivery? _____</p>	<input type="checkbox"/>



<p><b>Risk and Insurance</b></p> <p><input type="checkbox"/> When does the risk in goods pass to the buyer?          _____</p> <p><input type="checkbox"/> What are the risks of installation of the goods?          _____</p> <p><input type="checkbox"/> Is insurance required?</p> <p><input type="checkbox"/> Who pays the insurance?          _____</p>	<input type="checkbox"/>
<p><b>Reservation of Title</b></p> <p><input type="checkbox"/> Does ownership of the goods pass to the buyer when the goods are delivered, or</p> <p><input type="checkbox"/> Does the seller retain ownership until full payment is received?</p> <p><input type="checkbox"/> Does the supplier have right of entry to the buyer's premises to repossess goods?</p> <p>Where goods have been intermingled or sold, does the supplier still have the right to reclaim the goods or to claim against the proceeds of the sale?</p>	<input type="checkbox"/>
<p><b>Installation</b></p> <p>What are the obligations on the buyer to provide:</p> <p>Suitable premises          _____</p> <p>Accessibility          _____</p> <p>Services and amenities          _____</p>	<input type="checkbox"/>
<p><b>Limits on Liabilities</b></p> <p>Parties agree that the Consumer Guarantees Act does not apply</p> <p>Parties agree on liability, specifically:          _____          _____</p>	<input type="checkbox"/>

<p><b>Warranty</b></p> <p>Warranty to be given</p> <p>Covering: _____          _____</p> <p>Period: _____</p>	<input type="checkbox"/>
<p><b>Miscellaneous Clauses</b></p> <p>Right to cancellation</p> <p>Indemnity (against the failure by a buyer to use the goods in strict accordance with instructions)</p> <p>Terms of trade can be varied by notice in writing to the buyer from time to time</p> <p>Governing laws</p> <p>Force majeure</p> <p>Change of buyer details</p> <p>Notices</p> <p>Privacy</p> <p>Credit checks</p>	<input type="checkbox"/>

<p>Completed by: _____</p>	<p>Date: _____</p>
<p>Reviewed by: _____</p>	<p>Date: _____</p>

## Terms of Trade Example 1

### [Company Name]

## Terms of Trade Agreement

### Parties

An Agreement dated [Date]

Between [Company Name], the supplier, called 'The Company'  
[Address]

And [Customer Name], 'The Customer'  
[Address]

By requesting the Company to supply goods to the Customer, the Customer acknowledges and agrees (or is deemed to acknowledge and agree) that:

- The Customer's written assent or agreement to the Company's terms and conditions of trade (the 'Terms') constitutes a security agreement in favour of the Company in all of the present and after-acquired property supplied by the Company to the Customer; and
- The Terms will apply to each Contract and the supply of goods by the Company to the Customer and, where applicable, the provision of any incidental services under the Contract; and
- The Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full

### Goods and/or Services

- [Description of goods and/or services]
- All dimensions and specifications included are [exact/estimates]

### Price

- Prices quoted are excluding GST unless otherwise stated and all goods sold are subject to GST

### Payment

- Unless otherwise agreed, payment of the purchase price shall be paid to the Company by the 20th of the month following the month in which the invoice is dated
- Interest at [Rate of Interest]% per month may be charged on overdue accounts
- Any expenses, costs and disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor costs shall be paid by the Customer

### Delivery

- The Company shall deliver the goods to the address stated on the front page of this document. While every effort will be made to ensure that delivery of goods is on time, the Company will not be in any way responsible for any damages or consequential loss (direct or indirect) arising from any delay in delivery

### **Risk and Insurance**

- The Customer shall inspect the goods on delivery and shall within five days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Customer shall afford the Company an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the goods and the Customer shall be deemed to have accepted the goods
- The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company
- The goods remain at the risk of the Company until delivery to the Customer

### **Reservation of Title**

- The Company shall retain ownership of the goods until full payment is received and the Customer acknowledges this by signature of these Terms of Trade
- Until property in goods passes to the Customer, the Customer holds the goods as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept in order to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration
- This authority is revoked immediately if:
  - An Event of Default occurs; or
  - The Company notifies the Customer in writing that this authority is revoked

### **Limits on Liabilities**

- The Company shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions of trade. Any claim against the Company shall be limited to the invoice value of the goods
- The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company

### **Warranty**

- The Company warrants the goods against faulty workmanship for a period of [Period of Warranty] from the date of delivery of the goods
- The Company warrants that the fabricated goods will substantially conform with written specifications supplied by the Customer
- A claim under this clause must be made in writing to the Company within [Period of Warranty] from the date of delivery of the goods and no claim can be made under this clause unless and until the price is paid in full. The Customer must also give the Company notice of any defect in the goods within 7 days of the defect becoming apparent
- The Company's liability under this clause will be limited in its sole discretion to:
  - Restoring the goods in conformity with the written specifications supplied by the Customer; or
  - Replacing the goods

- Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so specified
- The repair of the goods under this clause does not include the cost or removal of defective material and fixing replacement material
- The warranty under this clause does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended

**Privacy**

- The Customer authorises the Company to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes only:
  - Assessing the Customer's creditworthiness
  - Disclosing to a third party details of this application and any subsequent dealing it may have with the Company for the purpose of recovering amounts payable by the Customer and providing credit references
  - Credit checks

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_

## Terms of Trade Example 2

### [Company Name]

## Terms and Conditions of Trade

### Parties

An Agreement dated [Date]

Between [Company Name], the supplier, called 'The Company'  
[Address]

And [Customer Name], 'The Customer'  
[Address]

1. Prices quoted are excluding GST unless otherwise stated and all goods sold are subject to GST.
2. Unless otherwise agreed, payment of the purchase price shall be paid to the Company by the 20th of the month following the month in which the invoice is dated.
3. Interest at 1.5% per month may be charged on overdue accounts.
4. Any expenses, costs and disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor costs shall be paid by the Customer.
5. The Company shall deliver the goods to the address stated on the front page of this document. While every effort will be made to ensure that delivery of goods is on time, the Company will not be in any way responsible for any damages or consequential loss (direct or indirect) arising from any delay in delivery.
6. The Customer shall inspect the goods on delivery and shall within five days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The customer shall afford the Company an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the goods and the Customer shall be deemed to have accepted the goods.
7. The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company.
8. The goods remain at the risk of the Company until the delivery to the Customer.
9. The Company shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions of trade. Any claim against the Company shall be limited to the invoice value of the goods.
10. The Customer authorises the Company to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes only:
  - (a) Assessing the Customer's creditworthiness.

- (b) Disclosing to a third party details of this application and any subsequent dealing it may have with the Company for the purpose of recovering amounts payable by the Customer and providing credit references.

**PPSA Security Interest**

- 11. By the acceptance of these terms and conditions of trade the Customer grants to the Company a Security Interest in the goods supplied and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligation of the Customer under this agreement.
- 12. As and when required by the Company the Customer shall at their own expense provide all reasonable assistance and relevant information to enable the Company to register a Financing Statement or Financing Change Statement. The Customer will not change name without first notifying the Company of the new name not less than 7 days before the change takes effect.
- 13. The Customer waives the right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of the Company in respect of the Security Interest created by these terms and conditions of trade.

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_

## Terms of Trade Example 3

### [Company Name]

## Terms and Conditions of Trade Agreement

### Parties

An Agreement dated [Date]

Between [Company Name], the supplier, called 'The Company'  
[Address]

And [Customer Name], 'The Customer'  
[Address]

By requesting the Company to supply goods to the Customer, the Customer acknowledges and agrees that:

- a) the Customer's written assent or agreement to the Company's terms and conditions of trade (the 'Terms') forming part of each Contract (as evidenced by the Customer's signature on the Company's credit application form or any other document which incorporates these Terms) is and constitutes a security agreement in favour of the Company in all of the Customer's present personal property and after-acquired property, but that these Terms do not apply to property not supplied by the Company; and
- b) the Terms will apply to each Contract and the supply of goods by the Company to the Customer and, where applicable, the provision of any incidental services under the Contract; and
- c) the Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full; and
- d) each Contract will create or creates, in favour of the Company, a security interest in the goods which are the subject of the Contract; and
- e) the security interest granted by the Customer to the Company secures the payment by the Customer to the Company of all amounts the Customer may owe the Company from time to time and at any time.



## 1. Interpretation

### 1.1 In these Terms:

'Amount Owing' means, at any time in respect of the Contract, the unpaid part of the Price and any other amounts which the Company is entitled to recover under the contract (including these Terms);

'Company' means [Company Name];

'Contract' means any contract between the Company and the Customer for the supply of goods, whether created by electronic mail, order form or by any other means;

'Contract Date' means:

- i) for a Contract arising from an order placed by the Customer, the date the Company accepted the order; or
- ii) for a Contract arising from a quotation from the Company, the date the Company receives written notification of acceptance of the quotation or, if the Company receives no written notification of acceptance of the quotation, the date the Company receives a form of acceptance that the Company (in its absolute discretion) treats as a valid acceptance;

'Customer' means the person(s) described or referred to on the credit application form which these Terms form part of or (if applicable) the person(s) identified as such on any document which incorporates these Terms;

'Event of Default' means any of the following:

- i) the Customer fails to comply with the Contract or any other Contract or agreement with the Company'
- ii) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;
- iii) an event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Customer's creditworthiness, the value of the goods, or the Customer's ability or willingness to comply with its obligations under the contract or any other Contract or agreement with the Company;
- iv) any guarantor of the Customer's obligations under the contract is in default under any agreement between the guarantor and the Company;

'FIS Contract' means a Contract under which goods are delivered on a 'free in store' basis;

'Goods' means all goods supplied by the Company to the Customer from time to time under the Contract, provided that;

- i) (but solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- ii) references to Goods shall mean the goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be assented to by the Customer and to be included in and form part of the contract; and
- iii) unless the context requires otherwise, Goods shall include all proceeds of such goods and any objects, products or mass which the goods subsequently become part of;

'GST' means Goods and Services Tax;

'Person' includes a body corporate, an association of persons (whether corporate or not), firm or individual;

'PPSA' means the Personal Property Securities Act 1999; and

'Price' means the price of goods and (if applicable) any incidental services agreed between the Company and the Customer, subject to any variation in accordance with these Terms and, unless specifically agreed otherwise in writing, is expressed before the addition of GST and any other applicable taxes and duties.

- 1.2 Headings do not affect the interpretation of these Terms.
- 1.3 Unless the context requires otherwise, the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: 'after-acquired property', 'financing statement', 'future advance', 'goods', 'inventory', 'perfection', 'personal property', 'proceeds', 'purchase price', 'security agreement', 'security interest' and 'verification statement'.
- 1.4 A reference to an enactment includes that enactment as amended or substituted and includes any regulations made under that enactment.
- 1.5 A reference to any party under these Terms includes that party's successors and permitted substitutes and assigns.

## 2. Price And Payment

- 2.1 The Price is the Company's current price for the goods and any incidental services as at the Contract Date or (if applicable, and subject to clauses 3 and 4) the Price quoted by the Company. Any difference between the price of the goods at the contract Date and at the date of delivery, due to circumstances beyond the Company's control, is to the Customer's account and the Price shall be adjusted accordingly.
- 2.2 Where the Customer requests the Company to estimate the quantity of the goods to be supplied from sketches, plans, schedules, specifications or otherwise, the Customer agrees to pay for any variation between the estimate and the actual quantities supplied and the Contract shall be deemed to be adjusted accordingly.
- 2.3 Where the Price is quoted on a FIS basis:
  - i) the Price includes all expenses necessary for the Company to deliver the goods to the delivery site noted in the Contract;
  - ii) unloading of the goods at the delivery site is to the Customer's account;
  - iii) the Customer will arrange for unloading of the goods at the delivery site within 30 minutes of the carrier arriving on-site; otherwise, waiting time may be charged by the Company;
  - iv) The Customer will ensure at its own expense that a reasonably safe and hard surface road or access-way is made available for use by the Company's carrier.
- 2.4 Payment for the goods will be made on the terms contained in the Contract. If not otherwise specified in the Contract, the Customer shall pay for the goods on the 20<sup>th</sup> of the month following receipt of an invoice (time being of the essence). An invoice will be issued by the Company on delivery or proof of shipment. If the Company is required by law to repay any amount on account of the Price, that amount will be deemed not to have been received by the Company and the Company shall be restored to the position it would have been in had no such payment been received by the Company.
- 2.5 The Company may, at any time, require the Customer to pay the Price by letter of credit, bank cheque, post-dated cheque or to secure payment of the Price by providing an assignment of debt, lien, mortgage, charge, guarantee or any other form of security.
- 2.6 The Company shall, without prejudice to any other remedy available to it at law, be entitled to treat any failure to make payment on the due date as a repudiation of the Contract by the Customer. In no event shall the Company be obliged to make any delivery of goods if any moneys due and payable by the Customer under any other Contract remain outstanding.
- 2.7 All expenses, costs, fees and disbursements incurred by the Company in recovering the Price and any other amounts payable under these Terms shall be recoverable from the Customer as part of the purchase price.

## 3. Quotes

- 3.1 A quotation by the Company is based on the current price for the goods and any incidental services (based on the Company performing the work during normal working hours) and subject to availability from the Company's usual source of supply as at the date of the

quote and shall not be binding on the Company unless the Customer has accepted the Company's quote within 30 days from the date of the Company's quote (time being of the essence).

- 3.2 The Company shall not be responsible for any errors or omissions caused by the mutilation or incorrect transmission contained in a facsimile message, electronic mail or other means of transmission in which the Customer has accepted the Company's quote.
- 3.3 For the purpose of calculating increased costs under a non-fixed price Contract, the Price specified in the quote does not include any labour costs. The Price shall be adjusted by the Company to reflect all labour costs and any other increased costs.
- 3.4 Labour costs for the purpose of calculating increased costs under the Contract will be based on Labour Cost Index (All Labour Costs) plus an allowance for holiday pay and insurances.
- 3.5 No allowance is made in the Company's quotation for any items set out under Special Conditions in the Company's quotation form.

#### 4. Variations

- 4.1 Any requested variation to the goods or work covered by the Company's quotation must be notified in writing by the Customer. If the Company agrees, the Company's quotation and the Price will be adjusted accordingly. If a variation is agreed after the Contract is formed, the Contract and the Price will be adjusted accordingly.
- 4.2 Should the Customer request the Company to work overtime or extra shifts, the Price will be adjusted to reflect the increase in cost caused thereby based on the excess rates paid and working hours recorded.
- 4.3 The Price will be adjusted to reflect any extra cost or expense incurred by the Company because of any instruction received from the Customer or any action or inaction on the part of the Customer.

#### 5. Contract

- 5.1 These Terms shall be read subject to the express terms and conditions contained in the Company's quotation or contained in the Company's confirmation of order. The Contract is subject to the Company having the goods in stock and subject to availability from the Company's usual source of supply.
- 5.2 All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded.
- 5.3 If there is a conflict between the Customer's order and the Company's confirmation of order (including these Terms), the Company's confirmation of order (including these Terms) will prevail.
- 5.4 An agent or representative of the Company is not authorised to make any representations, warranties or agreements that a senior executive of the Company has not confirmed in writing. The Company is not bound by unauthorised statements. Unauthorised statements cannot form a contract, or part of a contract, collateral to the Contract.
- 5.5 The rights, powers and remedies provided for in the Contract (including these Terms) are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.
- 5.6 The Customer's obligation to pay amounts (other than the Price) to the Company under these Terms shall be continuing and separate obligations which will survive termination of the contract and payment of the Price.

#### 6. Taxes And Duties

Unless expressly included in the quotation from the Company, the Price will be stated before the addition of GST and any other taxes and duties charged or levied in connection with the supply of the goods and any incidental services to the Customer. GST and all such other taxes and duties will be charged to and borne by the Customer (in each case, at the rate applicable at the date of any relevant invoice).

## 7. Default Penalty

The Company may charge the Customer a Default Penalty on any moneys due but unpaid under the contract which will be calculated on a daily basis at a rate of 1.5 per cent per month. The Default Penalty is without prejudice to any of the Company's rights, powers or remedies arising after the Customer's payment default.

## 8. Delivery

**8.1** Delivery of the goods will be made at the Customer's premises unless the Customer has instructed otherwise. If the Customer fails to take delivery, the goods are deemed to have been delivered when the Company was willing to deliver them and the Customer shall pay the Company an amount equal to any extra cost the Company incurs for either transport or storage or both.

**8.2** The Company accepts no responsibility for delay in delivery howsoever caused.

**8.3** Delivery is deemed to occur:

- i) for a FIS Contract, when the goods are ready and available for the unloading at the delivery point noted in the Contract or the site designated by the Customer;
- ii) in any other case, when possession of the goods is taken by the Customer.

**8.4** The Company may deliver goods by instalments. Each instalment is deemed to be a separate contract on the same terms as the Contract. If the Company fails to deliver, or makes defective delivery of, one or more instalments, the Customer is not entitled to cancel the Contract.

**8.5** Delivery of 10% more or less of the quantity of goods ordered by the Customer constitutes performance of the Contract by the Company. The amount under or over supplied shall be deducted or charged for pro rata and the Price shall be adjusted accordingly.

**8.6** If the Customer requests delivery to be made outside of normal working hours, the Customer shall pay to the Company an amount equal to any extra cost the Company incurs for transport.

## 9. Risk

**9.1** All risk in and for the goods passes to the Customer on delivery by the Company.

- i) If any of the goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without prejudice to any of its other rights or remedies under the Contract (including the right to receive payment of the Price), to receive all insurance proceeds payable for the goods. This applies whether or not the Price has become payable under the Contract. The production of the contract (including these Terms) by the Company is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## 10. Property

**10.1** Property in, ownership of and title to the goods shall not pass to the Customer until:

- i) the Customer pays the Amount Owing in full and all other amounts owing under other contract; or
- ii) (if applicable) the Customer resells the goods pursuant to the authority granted by these Terms.

**10.2** Until property in goods passes to the Customer, the Customer holds the goods as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept in order to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration.

**10.3** This authority is revoked immediately if:

- i) an Event of Default occurs; or
- ii) the Company notifies the Customer in writing that this authority is revoked.

## 11. Mill Certificates

If requested by the Customer, the Company will supply a mill certificate for the goods. The Company may charge the Customer a fee for the mill certificate.

## 12. Fabrication

- 12.1** If the Company fabricates the goods, the Company warrants the fabrication against faulty workmanship for a period of 6 months from the date of delivery of the goods.
- 12.2** The Company warrants that the fabricated goods will substantially conform with written specifications supplied by the Customer.
- 12.3** A claim under this clause must be in writing to the Company (addressed to the Company Secretary) within 6 months from the date of delivery of the goods and no claim can be made under this clause unless and until the Price is paid in full. The Customer must also give the Company notice of any defect in the goods within 7 days of the defect becoming apparent.
- 12.4** the Company's liability under this clause will be limited in its sole discretion to:
- i) restoring the goods in conformity with the written specifications supplied by the Customer; or
  - ii) replacing the goods
- 12.5** Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so specified.
- 12.6** the repair of the goods under this clause does not include the cost or removal of defective material and fixing replacement material.
- 12.7** The warranty under this clause does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended.

## 13. Return Of Goods

- 13.1** Except as provided in this clause, the Customer is not entitled to return the goods to the Company for any reason. For defective goods which the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the goods, or refunding the Price provided that:
- i) the Customer must notify the Company within 7 days of delivery that the goods are defective;
  - ii) the Company is given a reasonable opportunity to investigate the Customer's claim;
  - iii) the Company will not be liable for goods which have been tampered with or modified without the Company's approval or which have not been stored or used in a proper manner; and
  - iv) the Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective goods.
- 13.2** The Company may (in its discretion) accept the goods for credit but this will incur a handling fee of such amount as the Company may determine (and notify to the Customer) and the amount of any credit will be less any freight costs.

## 14. Liability

- 14.1** The Company will not be liable for:
- i) failure to deliver the goods by a specified date;
  - ii) an event beyond the Company's control;
  - iii) failure of the goods howsoever arising;
  - iv) testing the goods;
  - v) deterioration of the goods due to exposure to the elements after delivery;
  - vi) any negligence, misrepresentation or other act or omission by the Company or its agents; or
  - vii) any loss or damage resulting directly, or indirectly, from any of the above.
- 14.2** Despite anything else, any liability of the Company arising under the contract will not exceed the value of the replaced goods in relation to which the liability has arisen.

## 15. Default

- 15.1** If an Event of Default occurs, and without prejudice to any other rights, powers or remedies the Company may have:
- i) the Company may suspend or terminate the supply of goods to the Customer and any of its other obligations under the contract (and any other Contract), or cancel all or any part of any order with the Customer which remains underperformed;
  - ii) all Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and
  - iii) the Company may enforce any security interest granted to it by the Customer.
- 15.2** The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercises any rights, powers or remedies after the occurrence of an Event of Default, including under this clause.
- 15.3** The Customer agrees that, at any time after an Event of Default has occurred or at any time if any goods are at risk, the Company may:
- i) take possession of any goods; and/or
  - ii) sell or dispose of any goods in such manner and generally on such terms and conditions as the Company thinks fit, and, in each case, otherwise do anything the Customer could do in relation to the goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if and only for so long as the Company is not the secured party with priority over all other secured parties in respect of those goods. As agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept in order to take possession of and/or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.

## 16. Patents And Copyright

- 16.1** Copyright in all drawings, specifications and other technical information provided by the Company concerning the Contract is vested in the Company.
- 16.2** If the goods are to be supplied to the Customer's design, the Customer warrants that the manufacture and supply of the goods by the Company will not infringe any patent, copyright, registered design or other rights of any other person. The Customer agrees to indemnify the Company against any liability it incurs (including any costs and expenses) as a result of any claim that the manufacture or supply of the goods by the Company infringes any patent, copyright, registered design or other rights of any other person.

## 17. Dimensions And Specifications

Dimensions and specifications referred to in the Contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the Contract that the goods will correspond precisely with the dimensions,



specifications or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

## **18. Consumer Guarantees Act 1993 ('CGA')**

- 18.1** If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the goods.
- 18.2** In the case of any Customer (to which clause 18.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## **19. PPSA**

- 19.1** To the extent permitted by law, the Customer and the Company contract out of:
- i) section 114(1)(a) of the PPSA; and
  - ii) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
- 19.2** The Customer waives its right to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to the Company by the Customer.
- 19.3** The Customer agrees to indemnify the Company, upon demand, for all costs and expenses (including legal fees) incurred by the Company:
- i) as a result of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the Company by the Customer); and
  - ii) in complying with any demand made under section 162 of the PPSA.
- 19.4** On the request of the Company, the Customer shall promptly do all things (including signing any delivery docket and/or invoice) and provide all information necessary to enable the Company to perfect and maintain the perfection of any security interest granted to the Company by the Customer (including by registration of a financing statement).

## **20. Waiver and Severability**

- 20.1** All the rights, powers, exemptions and remedies of the Company remain in force despite any neglect, forbearance or delay in enforcing them. The Company will not be considered to have waived any right, power, remedy or condition unless the waiver is in writing under signature of either the Company or an authorised officer. The waiver applies only in a particular transaction, dealing or matter unless the Company agrees otherwise.
- 20.2** If any part of the Contract (including these Terms) or any other contract.

## **21. Compliance with Laws**

The Company will comply with all legislation, codes and standards specified in the contract and the Company is under no liability for a failure to meet any other legislation, codes or standards. If, after the Contract Date, there are any changes in legislation, codes or standards with which the Company must comply, then the Customer agrees to reimburse or pay to the Company an amount equal to any additional costs incurred by the Company relating to such compliance.

## **22. Assignment and Change of Name Etc**

- 22.1** The Customer may not assign any of the Customer's rights or obligations under the contract without the Company's prior written consent.
- 22.2** The Company may assign any of the Company's rights under the contract without the Customer's consent.
- 22.3** The Customer must give the Company (addressed to the Company Secretary) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or

any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

### 23. Trustee Liability

If the Customer is a trust, the contract will bind each trustee of that trust and each trustee personally. The Company's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right to or interest in any of the assets of the trust. However, this shall not affect the liability of an independent trustee who has guaranteed, in his or her personal capacity, the Customer's obligations under the contract.

### 24. Review of Terms

The Company reserves the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to these Terms that change will take effect from the date on which the Company gives notice to the Customer of such change.

### 25. Two or More Contracts

Where, at any time, there is an Amount Owing under two or more contracts, the Company may apply a payment made by the Customer under the contract in such manner (including in such order and to any amounts owing to the Company, including under another Contract) as the Company thinks fit (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by the Contract also secures the Amount Owing under any other Contract, and each Contract (and these Terms) shall be construed accordingly.

### 26. Governing Law

The Contract and these Terms are governed by the law of New Zealand.

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_



## Credit Control Guide

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**Extending credit** The nature of your business and the norms for your industry will influence your decision to extend credit.

Consider:

- accepted practice in the industry
- the needs of your business
- the terms granted by your own creditors

These can conflict. For example, liquidity problems and the need for a fast cash cycle may dictate short-term credit, such as cash 7 days.

On the other hand, industry custom may be well established as net 30 days. It is difficult to run against established custom because customers, having already developed one habit, cannot easily be changed. And when times are tight, they may shop around for more favourable terms.

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**Credit risk** Your judgment of credit risk relates to setting credit limits. When does an account become risky? How drastic should the action be in one or another set of circumstances? What resources are available to enable reasonable checks? Experience counts, here. The credit manager who is confident in his/her job and who has been doing it long enough to be familiar with the accounts will use his/her own judgment extensively.

When new customers are about to set up a credit account, run a credit check via a credit agency. If your credit relationship with existing customers is ongoing, run checks regularly.

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**Credit control application** In industries where it's common to extend credit, it's also common to ask customers to complete a credit control application. Weeding out bad credit risks early on will save you grief later.

Use a standard form to obtain billing information so that when you need to follow up about payment, the information is on hand. Your application form should include:

- company name
  - addresses for deliveries and billing
  - contact person for accounts
  - contact phone number and email address
  - your terms of trade
  - at least two credit references (use your discretion for customers who are obviously not going to be a concern such as government departments)
  - signature of applicant and authorisation to perform a credit check
- 

**Short/long term credit** It is an advantage to be able to establish short-term credit policies. This reduces to a practical minimum the level of investment in debtors, compared to where long-term credit is given. The whole working capital position of the business is affected by these considerations.

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<b>Credit limits</b>	<p>Set realistic credit limits for each customer, otherwise the sales staff have no guidelines, and the credit manager has no decisive measure against which to control the account.</p> <p>How should the credit limit be set in the first place and judged from time to time? There is no simple answer.</p> <p>Your industry knowledge will help keep you informed on debtors' ability to pay and market shifts driving increases or decreases in demand with consequent larger and smaller spends.</p>
<b>Capacity to pay</b>	<p>The capacity of customers to pay for increasing quantities of goods may be difficult to judge. Consider:</p> <ul style="list-style-type: none"><li>▪ the personal characteristics of the people involved</li><li>▪ the business character of the customer</li><li>▪ the length of time in business</li><li>▪ trade and industry information if available</li><li>▪ review of properly prepared financial statements</li></ul>
<b>Tell the team</b>	<p>When credit limits are set, communicate them clearly to appropriate personnel - sales people, the store manager, your accounts receivable team (if you have one), and your bookkeeper or accountant.</p>
<b>Systemise</b>	<p>Systemise your debtor management strategy:</p> <ul style="list-style-type: none"><li>▪ have a clear process for following up with debtors</li><li>▪ delegate responsibility for debtor management to one person</li><li>▪ train them in your process and give them the tools for the task</li></ul> <p>The sooner you chase the debt, the more likely you are to get paid. You need a system to identify any overdue credit sales as soon as they become overdue.</p>
<b>Tips</b>	<p>Remember! Your debtors will pay on time if:</p> <ul style="list-style-type: none"><li>▪ your trading terms are crystal clear (first meeting, quote, or estimate, agreed date for completion of work)</li><li>▪ your clients know when they are supposed to pay. Always have a specific 'Pay By' date</li><li>▪ you invoice as near as possible to supply of the goods or completion of the work</li><li>▪ debtors are reminded as soon as payment is late and followed up systematically</li></ul>
<b>Give customers options</b>	<p>Make it as easy as possible for customers to pay you. Offer multiple payment methods: credit card, cheque, PayPal, fee funding and internet banking.</p> <p>Offer multiple payment options:</p> <ul style="list-style-type: none"><li>▪ a discount for upfront payment</li><li>▪ 50% now and 50% on completion or delivery</li><li>▪ Instalments of up to 12 months with fee funding</li></ul>

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### **Fee Funding**

Fee funding is another payment option, not to be confused with factoring or invoice financing. It can help a business, particularly a professional service firm, be paid more quickly for one-off bills. It means your business is paid 100% of the amount you invoice your client, and you can offer your clients a way to pay their one-off bills in monthly instalments, rather than as a single lump sum. A range of providers offer it, such as [smartAR Group](#).

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### **Digital payment platform**

Use a secure digital payment platform such as [smartAR Group's Digital Payment Platform](#) to curate all your payment options. Clients will pay you faster if they can choose a payment method that suits them. Make sure all your emails and digital invoices have a link to the payment platform.

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## Who should be responsible for the credit and collection function?

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### Sales

It is not a good idea to put credit and collection management in the hands of sales staff. There is often a conflict of interest, which could defeat your credit policies in the long run. On the other hand, the sales and credit functions should co-operate and co-ordinate their interests.

The main objective on the part of each should be to retain customer goodwill and to ensure that the customer keeps returning (and keeps paying).

This is not achieved by overselling to the customer or by adopting loose credit policies and collection procedures. It is often in the best interests of the customer to be restrictive rather than liberal if you think they are getting out of their depth.

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### Credit officer

A credit officer is the logical person to control the credit management function. However, it is characteristic of many small to medium sized businesses that these responsibilities rest with an office employee, if the organisation cannot provide for a specialist credit officer.

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### Admin

It's a logical task to assign to administrative staff but it's often not very effective. You might be lucky enough to have a team member who is highly skilled in this and passionate about it. But too often admin staff lack focused training in this skill, and they also have to sandwich it in between other tasks. Call-backs are missed. The team member is demotivated by their lack of success and comes to dread the task. The whole process bogs down.

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### Owner

Debt collection can end up back with the owner of the business simply because they are the one most passionate about their business and the most closely concerned with cash flow. Their customers know them so there is a certain weight to a phone call from a business owner that a call from an office assistant just does not have.

However, this isn't best use of your time. Nor is it not the kind of conversation you want to have with your customers. Some separation is essential between the relationship you have with your customers – which you want to be as good as possible – and the 'dripping tap' approach which a good debt manager should have.

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### External

You can outsource the function to specialists such as smartAR Group. [smartAR Virtual Ledger Management](#) looks after the heavy lifting of contacting clients and chasing up payments. You can free up the resources you've been spending on it, to focus on core business functions and release payments to cash flow, instead of sitting in aged receivables.

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## Credit Control Application Form

On receipt of your completed application [Business Name] does not guarantee it will be accepted. We undertake to consider it and advise you whether it has been accepted at our earliest convenience.

Company			
Company Name	[Company Name]	Trading Name	[Trading Name]
GST No	[GST No.]	Incorporation No	[Incorporation No.]
Registered Office	[Registered Office]	Date of Incorporation	[Date]
Please give full names and addresses for Director(s). Attach additional names/addresses as required.			
1. Name	[Name]	Address	[Address]
2. Name	[Name]	Address	[Address]
3. Name	[Name]	Address	[Address]
Person in charge of account	[Name]		
Sole Trader or Partnership			
Trading Name	[Trading Name]	Incorporation No	[Incorporation Name]
Please give details of Partner(s)/Proprietor(s). Attach additional names/addresses as required.			
1. Name	[Name]	Address	[Address]
D.O.B.	[Date of Birth]		
Driving Licence No.	[D/Licence No.]		
2. Name	[Name]	Address	[Address]
D.O.B.	[Date of Birth]		
Driving Licence No.	[D/Licence No.]		
Person in charge of account	[Name]		

Trust (Complete if the Trustee/s is/are individual/s)			
Trust Name	[Name of Trust]	Person in charge of account	[Name]
Please give details of the Trustee/s. Attach additional names/addresses as required.			
1. Name	[Name]	Address	[Address]
D.O.B.	[Date of Birth]		
Driving Licence No.	[D/Licence No.]		
2. Name	[Name]	Address	[Address]
D.O.B.	[Date of Birth]		
Driving Licence No.	[D/Licence No.]		
Trust (Complete if the Trustee is a company)			
Trust Name	[Company Name]		
Trustee Company	[Name of Trustee Company]	Trading Name	[Trading Name]
GST No	[GST No.]	Incorporation No	[Incorporation No.]
Registered Office	[Registered Office]	Date of Incorporation	[Date]
Please give full names and addresses for Director(s). Attach additional names/addresses as required.			
1. Name	[Name]	Address	[Address]
2. Name	[Name]	Address	[Address]
3. Name	[Name]	Address	[Address]
Person in charge of account	[Name]		

Business Details			
Business Address	[Business Address]	Postal Address	[Postal Address]
Phone	[Phone No.]	Fax	[Fax No.]
Email	[Email Address]		

Credit Limit Required	[\$Amount]	Accountant(s)	[Name of Accountant]
Bank	[Name of Bank]	Branch	[Branch]

Please give details of Trade References.

1. Referee	[Name]	Address	[Address]
Phone	[Phone No.]		
2. Referee	[Name]	Address	[Address]
Phone	[Phone No.]		
3. Referee	[Name]	Address	[Address]
Phone	[Phone No.]		

Please give details of person(s) authorised to purchase goods

1. Name	[Name]	Position	[Position]
2. Name	[Name]	Position	[Position]
3. Name	[Name]	Position	[Position]
4. Name	[Name]	Position	[Position]

I confirm that the information provided above is true and correct to the best of my knowledge and I undertake to comply with credit terms attached hereto.

Signed \_\_\_\_\_ Date [Date] \_\_\_\_\_  
Name [Name] \_\_\_\_\_ Position [Position] \_\_\_\_\_

**Terms of Credit**

(The Supplier referred to as 'The Supplier'. The applicant referred to as 'The Purchaser').

1. I/We acknowledge that any credit granted following this application will be subject to the terms and conditions stated in this application or as subsequently varied by the Supplier at its discretion and advised to me/us.
2. Payment terms are 'Net [No.] Days', payment being due within [No.] days from the date of invoice unless alternative terms are agreed upon by the Supplier in writing.
3. Credit limit approved by the Supplier and advised to the applicant must not be exceeded.
4. Ownership of goods invoiced remains with the Supplier and does not pass to the Purchaser until such time as payment is made in full.
5. The Supplier, or its representatives, reserves the right to actively pursue collection of outstanding amounts, and costs, if any, will be passed on to the purchaser.

6. The Supplier will apply payments against the oldest outstanding amount due.
  7. Failure to comply with the 'Terms of Credit' may result in 'terms' being amended or credit withdrawn without notice.
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8. Confidentiality of your information – Except as required by law, the Supplier will only use or disclose your personal information as necessary for the credit facility. E.g. to Accounts Receivables staff or to external auditors.
  9. Default – If you or an authorised operator:
    - (a) Obtain credit by fraud or dishonesty;
    - (b) Allow the amount of a monthly statement to remain unpaid for more than [No.] days from its date;
    - (c) Breach any of these terms and conditions;
    - (d) Use the credit facility in circumstances where the Supplier believes that continued use of the credit facility may cause loss or damage to you or the Supplier; or if
    - (e) Any person who has guaranteed your obligations under the credit facility withdraws his, her or their guarantee, then the Supplier may close or suspend the credit facility. If the credit facility is closed or suspended then the Supplier may require immediate payment of all outstanding amounts. Suspension or cancellation does not affect any of your obligations or those of any authorised operator in respect of the credit facility.

I/We accept and agree to comply with the above terms in respect to the provision of a credit account with the Supplier.

Signed		Date	[Date]
Name	[Name]	Position	[Position]

  

Signed		Date	[Date]
Name	[Name]	Position	[Position]



Director(s)/Proprietor(s)/Guarantor(s) Guarantee			
Please give full names and addresses of Director(s)/Proprietor(s)/Guarantor(s)			
1. Surname	[Surname]	Given Names	[Given Names]
Date of Birth	[Date of Birth]	Phone	([Area Code]) [Phone No.]
Residential Address		[Address]	
2. Surname	[Surname]	Given Names	[Given Names]
Date of Birth	[Date of Birth]	Phone	([Area Code]) [Phone No.]
Residential Address		[Address]	
3. Surname	[Surname]	Given Names	[Given Names]
Date of Birth	[Date of Birth]	Phone	([Area Code]) [Phone No.]
Residential Address		[Address]	
4. Surname	[Surname]	Given Names	[Given Names]
Date of Birth	[Date of Birth]	Phone	([Area Code]) [Phone No.]
Residential Address		[Address]	
'The Guarantors'			
<b>Guarantee</b>			
(The Supplier referred to as 'The Supplier'. The applicant referred to as 'The Purchaser').			
<p>1. I/We the above-named Guarantors hereby agree jointly and severally to be answerable and responsible to the Supplier for the due payment by the purchase for all such goods and services as the Supplier may from time to time supply to the Purchaser. I/We acknowledge that this Agreement shall be a continuing Guarantee to the Supplier for all debts whatsoever and whenever contracted by the Purchaser with the Supplier in respect of goods or services supplied or to be supplied to the Purchaser (including any administration fee payable). It is hereby agreed and declared that, although as between The Guarantors and the Purchaser, The Guarantors may be a surety or sureties, yet as between The Guarantors and the Supplier, The Guarantors and each of them if more than one shall be deemed to be a principal debtor and liable jointly and severally accordingly. The Guarantors shall not jointly or severally be released by an act, matter, or thing the happening of which would release one liable only as surety. This Guarantee shall bind each of the persons executing it notwithstanding that one or more of the persons named in this Guarantee as Guarantor may not execute or may not be bound by this Guarantee.</p> <p>2. The Supplier reserves the following rights in relation to any and all goods supplied by it to the Purchaser until all accounts and/or monies owed by the Purchaser to it, (whether for the goods or</p>			

otherwise) are fully paid:

- (a) Legal ownership of the goods;
- (b) To enter the Purchaser's premises (or the premises of any associated Company or agent where the goods are located) without liability for trespass or any resulting damage and to retake possession of the goods; and
- (c) To keep or resell any goods repossessed pursuant to 2.2 above. If the goods are resold by the Purchaser, the Purchaser shall hold such parts of the proceeds of any such sale as represents the invoiced price of the goods sold in a separate identifiable account as the beneficial property of the Supplier and shall pay such amount to the Supplier upon request. Notwithstanding the provisions above, the Supplier shall be entitled to maintain an action against the Purchaser for the purchase price and the risk of the goods shall pass to the Purchaser upon delivery.

3. Payment Terms:

- (a) Unless otherwise agreed in writing all accounts shall be payable within [No.] days from date of invoice or as may otherwise be set out on any invoice or statement of account issued by the Supplier. In the event that the payment is not made as agreed, the Supplier may at its option withhold further deliveries or cancel any outstanding orders without notice to the Purchaser and without prejudice to any other action or remedy which the Supplier has or might otherwise have had, and all money owing and outstanding to the Supplier on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable (including any administration fee payable).
- (b) The Purchaser acknowledges and agrees that, if the Purchaser does not pay the invoiced price of the goods in full within [No.] days of the date of the first statement of account that relates to the relevant invoice (or such other date as the Supplier may specify), or the Purchaser breaches any other trading term (including, but not limited to, any term in the Credit Account Application Form and Guarantee Form), the Purchaser must, in addition to the invoiced price of goods, pay to the Supplier an administration fee equal to [Percentage]% of the invoiced price of the goods. The administration fee will appear on each invoice.

- 4. The Supplier may withdraw credit from the Purchaser at any time without prior notice.
- 5. I/We shall advise the Supplier in writing of any changes in respect of ownership or address.
- 6. I/We shall abide by the Supplier's conditions of sale as may be advised to us from time to time.
- 7. I/We agree, pursuant to the Privacy Act 2020 that disclosures by a credit reporting agency to the Supplier and use by the Supplier of the relevant information referred to in the Act may occur for the purpose of assessing this application.

I/We warrant the accuracy of the information set out in this Credit Control Application Form and Guarantee Form.

All Guarantors to Sign

1.	Full Name _____	Signature _____	
	please print	Date	[Date]
2.	Full Name _____	Signature _____	
	please print	Date	[Date]
3.	Full Name _____	Signature _____	

please print	Date	[Date]
4. Full Name _____ please print	Signature _____ Date	[Date]

---

(Office Use Only)

Application Received By [Credit Manager] \_\_\_\_\_ Date [Date]

References Checked and Recommendations

  
  

Credit Approved       Yes    No      Credit Limit    \$ \_\_\_\_\_

Signed \_\_\_\_\_      Date      [Date]

Approved By \_\_\_\_\_      Date      [Date]

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## Debtor Management Strategy

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### Have a plan

An effective debtor management strategy will be based on:

- always knowing how much money is tied up in debtors
- having clear policies and steps to follow up for payment
- briefing the team so everyone has a consistent approach

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### Debtors' ledger

Be familiar with your debtors' ledger and the aged debtors' reports.

Ensure the debtors' ledger is always up to date. You could lose a customer by someone refusing to fulfil an order on the basis that the account is over the limit when in fact payment has been received.

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### Debtor days

Work out your Debtor Days. Divide the amount owed to you by debtors by the invoiced sales figure (credit not cash sales) from your profit and loss account. Then multiply by 365 (days in a year). This will give you the average number of days it takes you to collect debt in your business.

Use this as a benchmark for all future calculations. If your first results show it takes you an average of 42 days to collect debts and your credit terms are strictly 30 days, you can set a goal of reducing the average collection time to as close to 30 days as possible. Ask us to work through scenarios on the debtor days calculator with you to look at how this could improve your cash flow.

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### Aged debtors

Review the aged debtors' report throughout the month. On the day after payment falls due, check the mail and bank account to confirm whether payment has been received. Even better, delegate this to someone you have trained in sound debtor management techniques and ask them for timely reports.

You'll have better results from following up on bills that are only a bit overdue than you will from debts that have been outstanding for ages. The smart money is in the 30 days column (...or the 7 days column).

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### Your strategy

Where you're doing it all in-house, the steps are:

- call your debtors
- follow up by email or letter
- call again
- more email or letter follow up
- another letter
- refer to a debt collection agency

Where your strategy uses an external provider for all or some of these, the external service can augment or replace your existing accounts receivable function to deliver a more cost-efficient, documented, and scalable process. You still need regular reviews of the debtors' ledger and it's important that your external provider gives you regular progress reports. For instance, with the [smartAR Group's Virtual Ledger Management](#) service every call, conversation and action undertaken for every client, is logged, and can be viewed at any time

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## In-house Strategy

### The tools

Review and customise the tools to help you with this process:

Tool	See page
Debtor Telephone Script	38
Debtors - 1st Letter to Debtor	40
Script for Second Telephone Call to Overdue Debtor	41
Debtors - 2nd Letter to Debtor	42
Debtors - 3rd Letter to Debtor	43

### 1<sup>st</sup> phone call

Call clients who have overdue balances. Use the script for phoning debtors and prepare beforehand.

Record details of telephone conversations in the Overdue Debtors file.

### 1<sup>st</sup> letter

Follow up your phone call by email or letter, using the 1<sup>st</sup> Letter to Debtor. If following up by letter, fax, and post hard copy. Diarise to follow up if payment is not received within the week.

### 2<sup>nd</sup> phone call

If payment is not received, follow up with the script for a second telephone call to an overdue debtor. Record details of your conversation in the Overdue Debtors file.

### 2<sup>nd</sup> letter

Again, follow up your phone call by email or letter, using the 2<sup>nd</sup> Letter to Debtor. If by letter, fax, and post hard copy. Diarise to follow up if payment is not received within the week.

### 3<sup>rd</sup> letter

If payment has not been received, write to clients, using the 3<sup>rd</sup> Letter to Debtor:

- Summarise all previous steps taken to settle the account
- Advise if payment is not received within 7 days, the matter will be placed in the hands of the firm's debt collection agency

### Debt collection

Diarise to follow up if payment is not received. Seek direction from management before referring the account to [Debt Collection Agency]:

- if the client disputes the amount of an invoice or payment of outstanding amounts, discuss how best to respond
- if a fee dispute exists and the dispute is unwarranted or frivolous, forward to [Debt Collection Agency] for further action

### Documentation

Complete the application form for [Debt Collection Agency]. Email and post this to them together with all supporting documentation. Refer to Overdue Debtors file.

## Debtor Telephone Script

The following is a script developed by [smartAR Group](#) to help businesses successfully negotiate faster payment with debtors who may have slipped beyond your standard payment terms. There are five key things to remember when making these calls:

- Clients outside your fixed credit terms are a problem to be solved
- Solving this problem is a today issue
- You should have plenty of options to help resolve this problem
- You are in control – not the client
- Be prepared before making calls e.g. have the quick quote calculator ready for monthly quotes; make sure the client hasn't paid in the last couple of days or arranged fee funding directly; be ready to implement any payment option.

We strongly recommend that a team member other than a Director, Manager or a person who works with the client make the call. Delegate or outsource.

Based on the Slow Payer Telephone Script, by [smartAR Group](#)

What to say	Why to say this	Common objections
<p><b>Good Morning...</b></p> <p><b>My name is [Your name], calling from the credit control division of [Firm name], how are you today?</b></p> <p>[If you have sent a letter previously]</p> <p><b>Do you recall receiving a letter/email from us recently?</b></p> <p>[If no prior letter/email]</p> <p><b>Do you recall the work we did for you recently?</b></p>	<p>Use the client's name, it makes the call less officious and ask how they are - warmly. The part of the brain working in 'here and now' has to turn off when you ask somebody to remember something. This means you will have the client's undivided attention.</p>	<p><b>Gosh, I'm very sorry, I'll transfer the money today.</b></p> <p>Thank you very much for helping us solve this problem today. Since however the account is outside our fixed credit terms, we need you to make a bank transfer or drop in your cheque this afternoon – which would suit you better?</p>

<p>(whatever they say)</p> <p>That's fine, the reason I'm calling is because your account with us is beyond our fixed credit terms of [number of days] days. This is a courtesy call to sort this out and let you know the available payment options.</p> <p>(Do not pause, just go through your options.)</p> <ul style="list-style-type: none"> <li>- <b>You can either direct credit our account today; or</b></li> <li>- <b>You can drop cash in for payment today; or</b></li> <li>- <b>I can take your credit card details now; or</b></li> <li>- <b>We can arrange an instalment plan now to spread the payments over either six or 12 months</b></li> </ul> <p><b>Which option would you prefer?</b></p> <p>(PAUSE – say nothing!) see notes =&gt;</p> <ul style="list-style-type: none"> <li>- <b>Direct Credit – OK, that's fine, let me give you details of our account. I'll keep an eye open for the deposit this afternoon.</b></li> <li>- <b>Credit Card – OK, that's fine, let me get your details now.</b></li> <li>- <b>Pay by instalment – OK, that's fine. I'll get the paperwork to you today by email. Would you prefer the payments to start tomorrow or the next day?</b></li> </ul> <p><b>Thank you for helping us tidy up the account. Is there anything else we can do for you?</b></p> <p><b>Goodbye.</b></p>	<p>The implication is this is not a big deal – it is a small problem that can be solved. Also, this reinforces that the credit terms are FIXED.</p> <p>List all the options available with your firm and be sure to include the words 'today' or 'now' (without particular emphasis) to retain the immediacy of the problem/solution.</p> <p>The silence may go on for some time. Try not to be the one who breaks it – if you must, say only:</p> <p><b>'Would you like me to repeat the options?'</b></p> <p>Clients will either confirm or ask a question about an option. It is safe to assume that whichever option they mention is what they want to do.</p> <p>Generally, answer any direct questions relating to the payment option with some alternatives (e.g. Would you rather use Visa or MasterCard?) then proceed to implement it.</p>	<p><b>I'm just waiting for (GST refund, big client to pay them, whatever) and I'll pay you then.</b></p> <p>Thank you for understanding our problem. What we do in these circumstances is arranged to fund the fee until you get [the refund, whatever]. This will help your cash flow and there is no penalty if you repay the financier early when you later get paid. Would you prefer to spread the fee over six months or 12 months?</p> <p><b>I'm very busy now can I call you back tomorrow?</b></p> <p>Yes, I understand you are very busy, so I guarantee I'll not waste a moment of your time. The reason I'm calling is ... per original script above.</p> <p><b>Let me think about it and I'll get back to you.</b></p> <p>That's fine, with so many options it is sometimes difficult to choose. Just to clarify, since you are outside our credit terms, we need a direct credit or credit card payment or if you prefer, we can arrange a monthly payment option starting next Monday. Which would suit your cash flow best?</p>
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## Debtors - 1st Letter to Debtor

[Date]

[Customer Name]

[Address 1]

[Address 2]

[Address 3]

Dear [Salutation]

I'm following up after our telephone conversation [today/yesterday] about our outstanding account(s) of [Date Month Year] for \$[Amount].

I confirm, as agreed with you, that you will now pay the account(s) by [method of payment].

I look forward to receiving this payment so that we can resolve this.

Kind Regards

[Credit Manager]

[Position Description]



## Script for Second Telephone Call to Overdue Debtor

'Hello [First Name], this is [Your Name].

I'm calling in follow up to our outstanding account. When we last spoke on [Date], you confirmed you were going to pay us by [Nature of agreement with the customer, including agreed date of payment].

However, to date I still have not received payment.

Please can you attend to the payment immediately?

Thanks for your help with this, [First Name], I really appreciate it.'

## Debtors - 2nd Letter to Debtor

[Date]

[Client Name]

[Address 1]

[Address 2]

[Address 3]

Dear [Salutation]

I'm following up after our telephone conversations about our outstanding account(s) of [Date Month Year] for \$[Amount].

I called you on [Date] about our overdue account(s) and you confirmed you would pay the outstanding amount of \$[Amount].

When we still had not received payment, I called you again on [Date] to follow up. You agreed to pay the outstanding amount.

I look forward to our receiving payment so we can resolve this.

Please note that if we do not hear from you within 7 days we have no option but to consider placing this matter with [Our Debt Collectors].

Thank you for your assistance with this matter.

Kind Regards

[Credit Manager]

[Position Description]

## Debtors - 3rd Letter to Debtor

[Date]

[Client Name]

[Address 1]

[Address 2]

[Address 3]

Dear [Salutation]

This is a letter we do not enjoy writing.

We have contacted you several times by phone and [email/letter] regarding your overdue account, but we still haven't received anything from you.

[List all communications by phone and email/fax/post]

We strive to provide the best possible service to our clients. Please contact us if there are circumstances affecting your business which we're not aware of.

The amount owing is \$[Amount], outstanding since [Date Month Year]. Please pay immediately. If we do not receive payment within 7 days this account will be placed with the [Our Debt Collectors].

Kind Regards

[Credit Manager]

[Position Description]

## What if they still don't pay? Options

### Bad debts

You really don't want to write off bad debts. All you invested in the sales cycle (not to mention the effort invested in trying to recover payment) and the profit margin you expected to earn on the transaction is lost.

Consider carefully whether to write-off a bad debt and at what stage in the collection process to hand over the debt to a collection specialist. The decision to incur further costs to chase relatively bad money is not always easy. If you intend to claim a tax deduction for bad debts you have written off, make sure your documentation is in order.

### Credit insurance

Credit insurance may be a good idea, especially where a large percentage of total sales are made to a small number of customers.

There are relatively few credit insurers in New Zealand. Before approving an application for cover, the insurer is likely to run credit and other checks on a selection of your larger customers.

Where the business relies on a small number of customers, perhaps even only one, the insurer is likely to request full financial statements and other detailed information from the debtor/s.

### Debtor finance

It may be possible to shift the risk and restore cash flow using a debtor finance strategy. Debtor finance can provide immediate access to cash tied up in the debtors' ledger. There are various forms of debtor finance:

Term	What it does...
Factoring	Allows you to raise finance based on the value of your outstanding invoices. The factoring house pays you for the outstanding invoices and takes on the risk of getting paid (see the guide on Factoring).
Invoice Finance	Maximises your cash flow by funding up to 80% of the value of your credit sales invoices. The <a href="#">BNZ website</a> which has some useful tips on <a href="#">invoice finance</a> .
Invoice Discounting	Allows a business to draw money against its sales invoices before the customer has actually paid. The business borrows a percentage of the value of its sales ledger from a finance company, the unpaid sales invoices as <a href="#">collateral</a> for the amount borrowed. Unlike factoring, you don't have to commit your whole debtors' book to the invoice discounting firm.
Fee Funding	Allows the supplier access to their cash immediately, while providing a seamless, low cost funding facility for their customer. Customers complete an instalment plan and pay off the bill by direct debit over time, for example, over 6, 10 or 12 months. It's typically available to professional services businesses such as accounting or legal firms. The <a href="#">smartAR Group's website</a> has more information.

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**Who do I talk to about debtor finance?**

A quick web search on 'debtor finance', 'factoring', or 'invoice finance' will turn up various companies offering debtor finance products. For further information, refer to our guide on debt factoring and invoice finance.

If you would like to discuss debtor finance options suitable to your business, please contact us.

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**Debt collectors**

Most debt collectors charge a sliding commission scale depending upon the amount of debt but there's often also a minimum fee. Arrangements vary but a combination of upfront fee plus commission on actual collections (as high as 30 per cent of the total debt) is common.

Some debt collectors prefer to work for large businesses. Shop around to find someone prepared to do it for a reasonable price. Check that the collection business is reputable and will not resort to heavy-handed stand-over tactics.

Ask your industry association, local Chamber of Commerce, or business contacts who they use for debt collection and how efficiently the process was handled. Most of the main debt collection agencies belong to Associated Credit Bureaux NZ (ACB), so before hiring a debt collector ensure you have proof that the person or company is a member. Before hiring a debt collector, ask for proof that the person or company operates a trust account.

Remember! If the debt collection agency you use charges collection costs and your debtor will be liable for these, you must have advised the debtor of this when they bought (or ordered) the goods or services (for example in the terms of trade).

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**Taking it to court**

If all else fails, taking the matter to court is your last resort. Traders used to take bad debts to the Small Claims Tribunal. This has been replaced by the Disputes Tribunal. However, the Tribunal only has jurisdiction to deal with debts that are in dispute – in other words, it cannot be used as a debt collection agency. Matters where there is no dispute, but the debtor just has not paid the debt are processed through the District Court. See the guide on the Disputes Tribunal and the District Court.

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## Debt factoring and invoice financing

### Introduction

Small business operators that trade with customers on a credit basis may consider several ways to obtain upfront financing to help cope with unpaid invoices:

- debt factoring, also known as invoice factoring
- invoice financing, also known as accounts receivable financing
- invoice discounting

They are all ways to monetise your unpaid invoices and obtain upfront working capital immediately. All provide greater flexibility than a business loan for a static amount, but they tend to be expensive.

Companies operating in this industry may offer one, some or all the above services. Consider consulting a finance broker to identify a service which best suits your business.

### Debt factoring

With debt factoring, the factor purchases a business' debtors' invoices for a fee:

- you received cash for a high percentage of your debtors' invoices (typically up to 85-90% of the invoice value), virtually simultaneously with the sale
- your customers will be notified since the factor will be collecting payment
- the factor will collect the full amount of the invoice from the customer
- once the customer has paid the invoice, the factor will pay the remaining balance to you, less the agreed-upon factoring fee

In contrast to invoice financing, invoice factoring involves actually selling your invoices to the factoring company.

### Invoice financing

With invoice financing, you use your invoices as collateral for a line of credit:

- you can usually get up to 85% of your invoice upfront from the lender
- you may choose whether to disclose you are using this finance option to customers
- you are responsible for collecting the invoice payments
- once your customer pays the invoice, you pay the lender back

Companies may offer selective invoice financing and/or larger full ledger invoice financing.

### Invoice discounting

With invoice discounting, having agreed terms and fees, the discounting company advances a percentage of the invoice face value to you upfront (typically 70-85%) and the financing provides essential cash to bridge the gap while customers pay:

- the discounter does not provide any credit control service and you maintain control over your own sales ledger, payment chasing and client relationships
- your customer does not need to know of the third party involvement

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**Undisclosed factoring**

Normally, if you use a factoring company, statements will be forwarded to your debtor in the name of the factoring company. If you do not wish to disclose that a factor is being used, 'undisclosed factoring' is an option where the business' customers are not aware that the debtors have been factored. The factor buys the goods that have been sold (instead of the debt) and, as an undisclosed principal, appoints the original seller to act as an agent to recover the debt.

Invoices, statements etc. do not mention the name of the factoring company in any way.

Undisclosed factoring can cost more, and the factoring company may require more strenuous credit checks on your business. There is not the usual requirement for customers to be notified about the assignment of the receivables to the factoring company and for customers to consent to that assignment.

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**Implementation**

If you go ahead with debt factoring, implement it carefully. Tell your customers you plan to use the services of a factoring company, and why. Unless you explain otherwise, they might see the move as an indication that your business is in trouble and start to source alternative suppliers.

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**Factorer requirements**

Many factoring and invoice financing companies have restrictions on the size of the business they are prepared to deal with and most demand annual credit sales of at least \$300,000 before they will consider making factoring available. Check the marketplace for the type of deals that can be negotiated.

The factoring company will also ask to see annual financial statements together with periodic financial statements, your business plan, and possibly a cash flow forecast for the coming year. They will require permission to conduct an audit on your debtors' affairs to determine they are credit worthy.

Many small businesses have found that the inconvenience of the factoring company controls, and the fees, are acceptable because of the benefits of substantially improved cash flow from their credit sales.

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**NZ factoring companies**

The next section summarises terms, requirements, and factoring costs for two New Zealand factoring companies, as examples.

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## Factoring Companies

Factoring Company	Services	Advance Rate	Guidelines to Qualify	Administration Fee	Interest Charge	Security Required and Terms and Conditions
<b>Scotpac Business Finance Ltd</b> <a href="http://www.scotpac.co.nz/">www.scotpac.co.nz/</a>	<ul style="list-style-type: none"> <li>- Full service factoring</li> <li>- Confidential factoring service</li> <li>- Co-operation factoring service</li> <li>- Invoice finance</li> <li>- Selective Invoice Finance</li> <li>- Can be as actively involved in the collection process as you wish or completely dormant, depending on requirements and the facility you have opted for</li> </ul>	Up to 85% of the approved debtors	<ul style="list-style-type: none"> <li>- Invoices should be for goods/services which have been fully delivered/completed when the invoice was raised</li> <li>- It must be business to business not business to consumers</li> <li>- No dispute exists with invoice. Invoices older than 90 days (from the end of the month in which they were raised) are not eligible for funding</li> <li>- If one debtor forms a major part of debtors' ledger, there may be a reduction in funds available</li> </ul>	<ul style="list-style-type: none"> <li>- Calculated on face value of each invoice – ranges from 0.2% to 2.5%</li> <li>- OR they can fix a monthly charge</li> <li>- Dependent on level of turnover, number of debtors and debt turnaround</li> </ul>	<ul style="list-style-type: none"> <li>- Charged on funds drawn down from your facility</li> <li>- Charged at banks' prime lending rate plus a margin, which is flexible from a negative margin for the right deal to their highest margin of +2%</li> <li>- Accrued daily and charged monthly in arrears</li> </ul>	<ul style="list-style-type: none"> <li>- No residential property security</li> <li>- Shareholders/ Directors guarantee required</li> </ul> <p>A Factoring Agreement will need to be signed for a period, usually 12 months, with an agreed specified notice period. The notice period is flexible and can be negotiated.</p>
<b>Lock Finance</b> <a href="http://www.lockfinance.co.nz/">www.lockfinance.co.nz/</a>	<ul style="list-style-type: none"> <li>- Full service factoring</li> <li>- Co-operation factoring</li> <li>- Export factoring</li> <li>- Debtor administration only</li> <li>- Purchase order finance</li> <li>- Trade finance</li> <li>- Inventory finance</li> <li>- Working capital advances</li> </ul>	<p>Up to 80% of the value of the sales ledger immediately.</p> <p>Other facilities by arrangement.</p>	<ul style="list-style-type: none"> <li>- Companies that show growth potential, strong core business and a stable, secure market</li> <li>- Minimum turnover of \$300,000</li> <li>- Invoices 90 days past are not eligible for finance</li> <li>- No dispute exists with the invoice</li> <li>- Invoices should be for goods/services which have been fully delivered/completed when the invoice was raised</li> <li>- If one debtor is major part of debtors' ledger – there may be a reduction in funds available</li> </ul>	<ul style="list-style-type: none"> <li>- Calculated as a percentage of the face value of all invoices (incl GST) presented</li> <li>- Generally ranges from 0.3% to 2.5% plus GST</li> <li>- One off application fee may be applicable for creation of the facility</li> </ul>	<ul style="list-style-type: none"> <li>- Calculated on net daily outstanding balance</li> <li>- Charged at base interest rate (determined by S H Lock) plus a margin – ranging from 1% to 4%</li> </ul>	<ul style="list-style-type: none"> <li>- First or second debenture/ mortgage over Company</li> <li>- First ranking over debtors</li> </ul> <p>A Debt Factoring Agreement is required. No specified term but a one-month notice period is required.</p>



## Legal Remedies for Debt – Disputes Tribunal and District Court

### Introduction

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The last resort for pursuing stubborn debtors is the legal system. It can be costly, time consuming and frustrating and it takes you away from what you're best at in your business. It's much better to have a rigorous in-house debtor management system which still preserves the customer relationship. But sometimes the legal remedies are the only ones left.

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### Legal letter

If you're not ready to take it to court yet, and you have called, emailed, and sent letters to no avail, then, for a fee, your lawyer will send out a legal letter.

This is more likely to impress honest customers than hardened payment evaders and it puts a distance between you and the customer because legal letters are a threat to the customer. The door is starting to close on the relationship.

If it does not result in payment, consider whether to take it further.

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### The Disputes Tribunal

The Disputes Tribunal is a small claims court which provides New Zealanders with a quick, inexpensive, informal, and private way to help resolve a wide range of civil disputes.

There are no lawyers or judges. A referee who has been carefully selected and trained hears a dispute. Any ruling they make is binding and will, if necessary, be enforced by the courts.

If your claim is for \$15,000 or less (or \$20,000 if both parties agree) and is disputed, then it may be able to be heard by the Disputes Tribunal.

The Disputes Tribunal can help with the following kinds of disputes:

- whether work has been done properly
- whether goods purchased were what the customer asked for
- the amount charged for work done
- damage to or loss of property, for example during installation of new equipment
- payment for a loss caused by misleading advertising or misleading statements made by someone selling goods or services, for example an advertisement that suggests speakers are included in a sound system when they are an extra cost
- hire purchase agreements
- denying that you owe money for an account sent to you

The Tribunal only has jurisdiction to deal with debts that are in dispute – in other words, it cannot be used as a debt collection agency.

Matters where there is no dispute, but the debtor just has not paid the debt, are processed through the District Court.

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### The District Courts

[District Courts](#) can be used by businesses for the collection of small debts through the Notice of Claim process.

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## Civil claims

A civil claim involves formal legal action against a person or organisation.

A person or organisation can make a claim after they have tried other methods to resolve a dispute but have not been successful, or if they want to recover money they believe is owed to them.

Once a claim is filed in court, the person who made the claim is known as the plaintiff. The person whom the claim is against is called the defendant. They are both called the parties.

## The claims process

The claims process starts when someone files their claim form at the District Court. This formalises the claim but does not mean that the claim will progress to a court hearing. The claims process is designed to help both parties reach agreement, so the dispute does not end up in court.

You can pursue this process yourself. However, as legal processes can be complex it is wise to ask your lawyer to advise you throughout the process. The [Civil Justice website](#) has more information as well as links to the relevant forms.

## Steps in the claims process

<b>Notice of claim</b>	As a creditor pursuing a debt, you would file a Notice of Claim form. A notice of claim tells the defendant and the court what your claim is about.
<b>Response by the defendant</b>	On receipt of the notice of claim, the defendant will respond to the claim, outlining their version of the facts about the claim.
<b>Plaintiff's information capsule</b>	As a plaintiff you lodge an information capsule form to give the defendant a summary of the information you intend to rely on for your case.
<b>Defendant's information capsule</b>	The defendant lodges an information capsule form to tell the plaintiff the most important information about their case.  After reading the defendant's version of the case, you might decide you can reach an agreement with the defendant and proceed to settle the claim with the defendant.
<b>Notice of pursuit of claim</b>	After reviewing the information, if you decide to pursue the case, you lodge a notice of pursuit of claim form to tell the defendant and the court that you will pursue your claim in the District Court. Pursuing a claim means you plan to continue with your claim through the court system.
<b>Application for judgment</b>	If the defendant has not returned their documents or information in time, you can apply for judgment if you want the court to judge your claim in your favour.  Judgment is a process that deals only with uncontested claims (that is, when a plaintiff starts a claim, but the defendant does not respond in time).
<b>Proceed to court</b>	If the defendant has returned their documents and there is a case, it will proceed to a court hearing.

<b>Outcomes</b>	<p>If the matter proceeds to court and the judgment is in your favour, then the court order will include the following:</p> <ul style="list-style-type: none"> <li>▪ the original debt</li> <li>▪ interest at either the rate agreed in the terms of trade, or at 7.5% (a standard rate set by legislation), or at some other rate that the court decides</li> <li>▪ legal costs and disbursements associated with obtaining the judgment (these will not cover all your expenses)</li> </ul>
<b>Enforcement</b>	<p>If you've obtained judgment for the debt, note that you are responsible for pursuing the debt, not the court. However, if the debtor still does not pay, you can use the court to enforce payment of the debt. The most common enforcement methods are:</p> <ul style="list-style-type: none"> <li>▪ Order for Examination</li> <li>▪ Attachment Order</li> <li>▪ Distress Warrant (for personal property)</li> <li>▪ Charging Order and Writ of Sale (for land)</li> </ul>
<b>Order for Examination</b>	<p>This is a court order to have the debtor brought before the court Registrar and examined about his or her financial situation. If the Registrar decides the debtor can pay the debt, the Registrar will make an order for payment. Usually, the Registrar will try to negotiate an arrangement for payment that suits both parties. The Registrar can also make several other enforcement orders (including the ones listed below).</p>
<b>Attachment Order</b>	<p>An Attachment Order instructs the debtor's employer to make regular deductions from the debtor's wages or salary (including bonuses and incentive payments). It can also order ACC or Work and Income to make deductions from ACC payments or welfare benefits. An Attachment Order can also be made against commissions and payments received as an independent contractor. An Attachment Order can't be made unless there has first been an Order for Examination.</p>
<b>Distress Warrant</b>	<p>A Distress Warrant authorises a Collections Officer from the court (a 'bailiff') to seize goods from the debtor to the value of the debt. These are held for five days and then sold, usually by public auction.</p>
<b>Charging Order and Writ of Sale</b>	<p>The registration of a charging order puts a stay on the debtor's property, preventing him or her from selling the property until the debt is satisfied; the property can be sold to satisfy the debt by a writ of sale.</p>
<b>Debtor bankruptcy</b>	<p>If the debtor is bankrupt or has no assets, seek legal advice to fully understand what is involved. A bankruptcy notice and bankruptcy proceedings in the High Court is a separate set of court proceedings against the judgment debtor. The costs for a court case in the High Court include filing fees, disbursements such as other service fees (which could be up to \$150), and solicitor's costs calculated on an hourly basis. The other enforcement steps are also separate proceedings.</p>

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