

Total Food Equipment



APPLICANT DETAILS

Trading Name or Account Name.....

Type of Business Company/Individual/Sole Trader/Partnership/Trust/Other

Contact Person.....

Contact Details

Daytime Telephone.....After Hours.....Mobile.....

Email Address.....Fax Number.....

Address.....

Postal Address.....

FOR INDIVIDUALS, SOLE TRADERS & PARTENRSHIPS ONLY

Full Names

1.....("Customer")

2.....("Customer")

Previous Surname if Married (if you also use the previous name)

1.....2.....

Residential Address of Sole Traders/Partners

1.....This Property is Rented/Owned by You

2.....This Property is Rented/Owned by You

If you have lived at the above address for less than 5 years, please state your previous address(s) for the last 5 years

1.....

2.....

How long have you been trading?.....

FOR ORGANISATIONS (eg Companies, Incorporated Societies, Trusts, Government Departments)

Full Legal Name of Organisation.....("Customer")

How Long has the organisation been trading?.....Date of Incorporation.....

Address of Registered Office.....

Number of Directors/Trustees/Officers.....

Full Names of Directors/Trustee/Officer

1.....2.....
3.....4.....

ALL APPLICANTS TO COMPLETE

Trade References and Contact Details:

1.....Phone.....
2.....Phone.....
3.....Phone.....

Properties Owned - Address

1.....
2.....
3.....

DECLARATION

By signing and returning this Application I/We:

- (a) Understand that TFE reserves the right to decline this Application.
- (b) Confirm that the information supplied by me/us in this Application is correct and complete and I/we agree to immediately advise TFE of any material change of any of the information contained in this Application.
- (c) Have read and understood TFE's Terms of Trade attached to this Application and agree to be bound by the Terms of Trade and this Application. In particular I/we acknowledge having read clauses 5.4 and 5.5 and providing for the purpose of those clauses the property description contained in this application.
- (d) Agree that all orders for goods placed with TFE are supplied on these Terms of Trade.
- (e) Authorise any person or company to provide TFE with such credit information as TFE may require about me/us.
- (f) Authorise TFE to collect personal information about me/us from the trade referees named in this Application and from the credit reference agencies used by TFE. I/we acknowledge that such information is collected for any purpose connected with my/our business, for considering this application and for all purposes in connection with TFE marketing of products and services in New Zealand. I/we consent to TFE disclosing any such information to credit references and debt collection agencies and of information exchanges with them. I/we acknowledge that my/our rights at law in relation to obtaining and correcting all information about me/us held by TFE are not affected.
- (g) Acknowledge that where more than one applicant applies for credit each applicant will be jointly and severally liable.

Name(s) (if more than 1 individual, both must sign)	Authorised Signature(s)
1.....	1.....
2.....	2.....

Date.....

Position/Title

1..... 2.....

Witness to the above Signatures

Witness Name..... Date.....

Witness Signature.....

Witness Address.....

Witness Occupation.....

GUARANTEE (Required for Organisations)

In consideration of TFE approving this Application by the Applicant ("Customer") I (the guarantor whose name is listed below) jointly and severally unconditionally guarantee payment by the Customer of all monies due and owing by the Customer to TFE in respect of all credit extended by TFE as a consequence of this application including all monies due and owing by the Customer to TFE under the terms of TFE's terms of trade.

I accept that as between TFE and myself I am liable as a principal debtor in respect of such monies. I accept that my guarantee is unaffected by the unenforceability of any payment of such monies, by the liquidation or bankruptcy of the Customer, by the giving of time or any indulgence to the Customer by TFE or any other matter. I accept that demand for payment may be made on me by TFE without demand being made of the Customer.

I acknowledge having read the terms of trade, in particular clauses 5.4 and 5.5 and providing for the purpose of those clauses the property description contained in this application.

I acknowledge that prior to signing this Guarantee TFE advised me to seek legal advice in respect of my obligations under this guarantee and I elected not to obtain such advice (*Delete this paragraph if you have obtained legal advice*).

Full Name of Guarantor 1.....2.....

Occupation 1..... 2.....

Address (Not a PO Box) 1.....
2.....

Signature of Guarantor 1.....2.....

Date.....

Witness to the above Signatures

Witness Name..... Date.....

Witness Signature.....

Witness Address.....

Witness Occupation.....

TERMS OF TRADE
TOTAL FOOD EQUIPMENT LIMITED

1. **DEFINITIONS:**
 - 1.1 "Seller" shall mean Total Food Equipment Limited (hereinafter called "TFE").
 - 1.2 "Customer" shall mean any individual or entity to which TFE supplies Goods to under these Terms of Trade.
 - 1.3 "Goods" shall mean the Goods described in Schedule 1 to these Terms of Trade.
 - 1.4 "Perfected by Registration" shall have the meaning ascribed to it in accordance with the PPSA.
 - 1.5 "PPSA" shall mean the Personal Property Securities Act 1999
 - 1.6 "Purchase Money Security Interest" and "Security Interest" shall have the meanings ascribed to them in accordance with the PPSA.
 - 1.7 "Price" shall mean the cost of the goods (exclusive of GST) set out in Schedule 1 to these Terms of Trade including the cost of delivering.
2. **CREDIT CHECK**
 - 2.1 TFE reserves the right to complete a credit check on the customer and the Customer will provide all necessary information as requested by TFE to conduct a proper and thorough credit check.
3. **ACCEPTANCE OF ORDERS**
 - 3.1 An Order for Goods placed by the Customer shall be irrevocable and binding on the Customer and shall be deemed to be acceptance by the Customer of the provisions of these Terms of Trade.
 - 3.2 TFE may in its sole discretion accept or decline an order from the Customer either in whole or in part.
4. **DEPOSIT & PAYMENT**
 - 4.1 TFE may in its sole discretion require a non-refundable deposit of 10% of the total amount of the goods set out in Schedule 1 to these Terms of Trade. The deposit shall be payable by the Customer upon acceptance of an Order placed by the Customer with TFE and must be made by cash, cheque, credit card or bank cheque, or by direct credit, or any other method as agreed to between the Customer and TFE.
 - 4.2 In the event TFE requires a deposit to be paid, TFE will not process the Customer's order until the deposit is received by TFE.
 - 4.3 Time for payment of the Goods shall be of the essence and is due no later than the 20th of the month following the date of the invoice (the "due date"). If payment is made by credit card, TFE may in its sole discretion exercise the right to charge the Customer the costs incurred by TFE in processing the credit card payment together with any commission or charges payable to the credit card company by TFE.
 - 4.4 If payment in full as per the invoice is not made on the due date TFE may, without prejudice, to any other rights or remedies available to it charge the Customer default interest at the rate of 5% above TFE's bank overdraft rate calculated on a daily basis until payment in full has been made by the Customer.
 - 4.5 The Customer agrees to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by TFE or TFE's agents relating to the recovery of any amounts payable by the Customer to TFE.
 - 4.6 Nothing in these Terms of Trade are intended to amount to a credit contract, nor does TFE agree to provide credit beyond the due date for payment. If for any reason the Customer fails or refuses to pay and TFE allows the Customer to continue to trade or delays (whether at the Customer's request or not) in acting upon its rights in respect of the Customer's breach TFE shall not be taken to have granted credit nor to have waived any of its rights.
5. **SECURITY/CHARGE/PPSA**
 - 5.1 The Customer grants TFE a purchase money security interest and security interest in the Goods supplied by TFE and any after acquired property supplied by TFE in accordance with the provisions of these Terms of Trade.
 - 5.2 The Customer undertakes to execute all necessary documentation to ensure that TFE has perfected by registration its purchase money security interest in the Goods.
 - 5.3 The Customer will not enter into any agreement which permits any other person to register any security interest under the PPSA in respect of the Goods.
 - 5.4 Where the Customer and/or the guarantor (if any) is the owner of an asset such as land, realty or any other assets capable of being charged both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said assets to TFE or TFE's nominee. This mortgage and/or charge is to secure all amounts and other monetary obligations payable under these Terms of Trade.
 - 5.5 The Customer and/or Guarantor acknowledge and agree that TFE or TFE's nominee shall be entitled to lodge, where appropriate a caveat which shall be released once all amounts owing under this contract have been paid.
 - 5.6 In anticipation of such amounts and obligations being owned from time to time TFE may at any time caveat the title to the property described in the application form as completed by the Customer and/or the Guarantor.
 - 5.7 Should TFE elect to proceed in any manner in accordance with clauses 5.4 and 5.5 the Customer and/or guarantor shall indemnify TFE from and against all TFE's legal costs and disbursements calculated on a solicitor-client basis plus all reasonable costs of TFE's appointed solicitor (if any).
 - 5.7 To give effect to the provisions of clauses 5.1 to 5.5 hereof the Customer and/or guarantor (if any) irrevocably nominate, constitute and appoint TFE or TFE's nominee as the Customer's and/or guarantor's true and lawful attorney. As attorney they may execute Mortgages and Charges (whether registrable or not) and any other security against any assets of the Customer to secure the said Customer's and/or guarantor's obligations and indebtedness to the TFE. As attorney they can also perform all necessary and other acts including institute any necessary legal proceedings and execute all or any documents that in TFE's absolute discretion may be necessary or advantageous to the provisions of this clause.
 - 5.8 The foregoing provisions shall continue to apply notwithstanding that the Customer may have given TFE any other form of security interest.
 - 5.9 The Customer hereby:
 - (a) Waives its right to receive verification statements connected with any financing statement or financing charge statement registered under the PPSA referred to in section 148 of the PPSA;
 - (b) agrees that to the extent permitted by law sections 114(1)(a), 133 and 134 of the PPSA will not apply;
 - (c) agrees that to the extent permitted by law they will have none of the rights referred to in section s116, 120(2), 121, 125, 126, 127, 129, and 131 (PPSA); and
 - (d) agrees that where TFE has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
 - 5.10 In the event of default by the Customer TFE has the statutory rights ascribed to it under Part 9 of the PPSA.
6. **DEFAULT**
 - 6.1 The Customer will be deemed to be in default under these Terms of Trade if:
 - (a) It fails to pay any sum when due under these Terms of Trade;
 - (b) Any material adverse change in the financial position of the Customer;
 - (c) the Customer or the Guarantor allows a judgment or order against it to remain unsatisfied for a period of fourteen (14) days;
 - (d) the Customer or the Guarantor makes or agrees to make an assignment to or composition with its creditors;
 - (e) there shall be any alteration in the composition (whether direct or indirect) of the shareholding or control of the Customer or the Guarantor;
 - (f) the Customer or the Guarantor becomes bankrupt or goes into liquidation;
 - (g) the Customer or the Guarantor becomes subject to the appointment of a receiver; or
 - (h) any other creditor of the Customer seizes any Goods of the Customer;
 - 6.2 At any time following a default, TFE reserves the right to appoint a receiver of all or any of the Goods. The receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods, without in any way affecting any other powers conferred on a receiver by law or otherwise.
 - 6.3 TFE may charge the Customer any costs incurred (including legal costs) by TFE in enforcing any rights contained in these Terms of Trade.
7. **GUARANTEE**
 - 7.1 If the Customer is a company, TFE requires the Director(s) of the Customer Company to guarantee the obligations of the company ("the Guarantor").
 - 7.2 The Guarantor hereby unconditionally and irrevocably guarantees to TFE the due and punctual payment by the Customer of all moneys payable by the Customer to TFE under these Terms of Trade and the due and punctual performance by the Customer of its obligations under these Terms of Trade.
 - 7.3 The guarantee in clause 7.2 will be a continuing guarantee until actual performance by the Customer of its obligations under these Terms of Trade and the Guarantor's liability under these Terms of Trade shall not be affected by the liquidation of any party, any indulgence by TFE to the Customer, the non-exercise by TFE of any rights and powers under these Terms of Trade, the release, variation or abandonment of any security or other guarantee held by TFE or by any other matter which might otherwise limit the Guarantor's liability under clause 7.2.
 - 7.4 As a separate and independent stipulation, the Guarantor agrees to indemnify TFE against any loss or damage TFE may suffer or sustain by reason of any breach by the Customer of the terms of these Terms of Trade or by reason of these Terms of Trade becoming void or unenforceable in any respect against the Customer.
8. **CUSTOMER ACKNOWLEDGEMENT**
 - 8.1 The Customer and the Guarantor (if any) agree to be bound by the terms and conditions of these Terms of Trade. These Terms of Trade are fully understood by the Customer and the Guarantor
 - 8.2 The Customer acknowledges that the Goods supplied by TFE are primarily for business purposes and accordingly:
 - (a) the provisions of the Consumer Guarantees Act 1993 shall not apply;
 - (b) the only warranties, guarantees or undertakings TFE gives to the Customer in relation to the Goods (whether in relation to quality, fitness of purpose or otherwise) are those which are expressly stipulated by TFE to the Customer in writing (with all other warranties, guarantees or undertakings being excluded).
9. **RETENTION OF TITLE**
 - 9.1 Title to the Goods will remain the property of TFE until payment in full has been received by TFE.
 - 9.2 Until the Customer has paid TFE in full for the Goods the Customer may not sell (unless such sale is in the ordinary course of the Customer's business) dispose of or charge the goods and must hold or deal with the goods for and on behalf of TFE. However, if the goods are sold, in the ordinary course of the Customer's business, prior to property passing to the Customer, the proceeds of that sale are held by the Customer on trust for and on behalf of TFE.
10. **RISK AND DELIVERY**
 - 10.1 Unless TFE agrees otherwise, the Customer is responsible for the cost of and arranging transportation of all Goods. TFE accepts no responsibility for any damage to the Goods where the Customer has assumed responsibility for transportation and risk in the Goods pass to the Customer when the Goods are collected from TFE by the Customer's carrier.
 - 10.2 In the event TFE agrees to be responsible for delivery of the Goods the delivery costs will be paid by the Customer. TFE assumes responsibility for any damage to the Goods caused in transit.
 - 10.3 The Customer is responsible for insuring the Goods in all circumstances other than provided for in clause 10.2 hereof.
11. **RETURNS**
 - 12.1 TFE may in its discretion accept goods returned in return for a credit and will not be bound to provide a cash refund.
 - 12.2 No credit note will be issued without the original purchase information in the form of a sales invoice or a delivery note number.
 - 12.3 At TFE's discretion goods may only be returned if they have not been custom made and form part of TFE's usual stock in trade and the condition of the goods has not deteriorated.
 - 12.4 The Customer shall pay for the cost of return delivery where applicable.
 - 12.5 Where goods are so returned TFE will give a credit to the Customer after deducting an administration handling fee and the cost of delivery.
 - 12.6 No credit for goods returned will be made without a proof of return in the form of a signed Goods Returned for Credit note. Any discrepancies between goods returned and those recorded on the signed Goods Returned for Credit note will not be recognised by TFE.
 - 12.7 For defective Goods which the Customer is entitled to reject TFE's liability is limited to either (at TFE's discretion), repairing or replacing the Goods or refunding the Contract provide provided that:
 - 12.7.1 The Customer must notify TFE within 14 days of delivery that the Goods are defective
 - 12.7.2 TFE is given a reasonable opportunity to investigate the Customer's claim;
 - 12.7.3 TFE will not be liable for Goods which have been tampered with or modified without TFE's approval or which have not been stored or used in a proper manner; and
 - 12.7.4 TFE will not be liable to pay the Customer any amount more than the amount (if any) TFE received from the supplier for the defective Goods.
13. **MISCELLANEOUS**
 - 13.1 If at any time any provision of these Terms of Trade becomes illegal, invalid or unenforceable in any respect then that provision shall be severed from these Terms of Trade and the legality, validity or enforceability of the remaining provisions of these Terms of Trade shall not be affected or impaired in any way.
 - 13.2 These Terms of Trade sets out all the terms on which the Customer has agreed to enter into these Terms of Trade. Nothing TFE or any other person has advised (either orally or in writing) contradicts these terms. The Customer's acknowledgement that any variation to the Agreement must be approved by TFE in writing.
 - 13.3 Where the Customer and/or the Guarantor shall consist of more than one person, the obligations of the Customer and/or the Guarantor, as the case may be, under these Terms of Trade shall be joint and several.
 - 13.4 Failure by TFE to enforce any provision set out in these Terms of Trade shall be deemed to be a waiver of TFE's rights pursuant to that provision.
 - 13.5 The provision of one copy of these Terms of Trade will continue to apply in respect of all ongoing and future orders for Goods made by the Customer to TFE and both the Customer and TFE agree that these Terms of Trade apply accordingly.
 - 13.6 These Terms of Trade shall be governed by and construed in accordance with the laws of New Zealand.