E HAYES & SONS LIMITED
Hardware • Machinery • Household • Paint & Clothing Specialists

CREDIT APPLICATION FORM

[Tick One]

Sole Trader ☐ **Partnership** ☐ **Limited Liability Company** ☐ **Inc. Society** ☐ **Trust** ☐ **Other** ☐

NAME: *Surname* *Christian Names*

DATE OF BIRTH: *(for sole traders and other individuals)*

OCCUPATION: **EMPLOYER:**

NEAREST RELATIVE: *(for sole traders and other individuals)*

ADDRESS: **TELEPHONE NUMBER:**

COMPANY NAME:

TRADING NAME: **COMPANY REG. NO:**

NATURE OF BUSINESS:

ADDRESS: ***Physical***

Postal *(if different to above)*

Previous *(if current address less than 2 years)*

TELEPHONE NO: **FAX NO:** **MOBILE NO:**

CONTACT PERSON: **EMAIL ADDRESS:**

ACCOUNTANT: **TELEPHONE NO:**

- ADDRESS:

SOLICITOR: **TELEPHONE NO:**

- ADDRESS:

BANK: **BRANCH:** **ACCT. NO:**

ESTIMATED ANNUAL PURCHASES $_____

Has anyone ever served a notice or statutory demand or issued proceedings against you or your company for recovery of debt? **YES** ☐ **NO** ☐

If yes, please write details_____

_____

CREDIT REFERENCES OF OTHER COMPANIES TRADED WITH:

	NAME	PHONE NO:	ADDRESS OR EMAIL ADDRESS
1			
2			
3			

PREFERRED PAYMENT METHOD: 1. Cheque ☐ 2. Direct Credit ☐

I/We authorise any person or company to provide you with such information as you may require in response to your credit enquiries. I/We further authorise you to furnish to any third party details of this application and any subsequent dealings that I/We have with you as a result of this application being actioned by you".

I/We have read the **E Hayes & Sons Limited** Terms and Conditions of Sale attached and hereby agree to buy **all** goods on the said terms and conditions".

"Goods will not be supplied on credit until the terms have been accepted and **E Hayes & Sons Limited** are satisfied as to credit worthiness".

SIGNED:	
NAME:	
POSITION:	
DATE:	

for E HAYES & SONS LIMITED ***(office use only)***

CREDIT APPROVED BY:

DATE:

LIMIT: $

ACCOUNT NO:

MASTERFILE UPDATED: **YES** ☐ **NO** ☐

E HAYES & SONS LTD
168 Dee Street Invercargill, New Zealand
Phone: (03) 218-2059 - Email: nga.rees@ehayes.co.nz

STANDARD TERMS AND CONDITIONS OF SALE

*The following terms shall be incorporated into each contract entered into between the Customer and **E Hayes & Sons Ltd** for the supply of Goods.*

1. PRICE

1.1 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by **E Hayes & Sons Ltd**.

1.2 The price may be increased by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of **E Hayes & Sons Ltd's** acceptance of the customer's order and the date of delivery.

1.3 In addition, the price may be increased by an amount necessary to take account of any costs incurred by **E Hayes & Sons Ltd** as a result of the method of payment used by the customer, including, without limitation, any credit card transactions costs.

1.4 The customer is bound to pay the price from the time that **E Hayes & Sons Ltd** accepts the customer's order such acceptance to be in writing. Each accepted order shall, subject to clause 3.2, constitute a separate contract. A quotation does not give rise to a binding contract until the customer places an order which is subsequently accepted by **E Hayes & Sons Ltd**.

1.5 Alterations to any price list shall be effective from the date specified by **E Hayes & Sons Ltd** at the time of giving notice to the customer.

2. PAYMENT

2.1 Payment is due by the 20th of the month following the date of delivery pursuant to clause 3 unless **E Hayes & Sons Ltd** has agreed otherwise in writing.

2.2 **E Hayes & Sons Ltd** may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, **E Hayes & Sons Ltd** reserves the right to refuse to supply goods to the customer.

2.3 The customer may not withhold payment or make any deductions from or set off any amount against any amount owing without **E Hayes & Sons Ltd's** prior written consent.

3. DELIVERY

3.1 Delivery shall be made at **E Hayes & Sons Ltd's** premises and shall take place at the time when the goods are made available for despatch at **E Hayes & Sons Ltd's** premises. If, at the customer's request, **E Hayes & Sons Ltd** subsequently arranges transportation, storage or insurance of the goods, **E Hayes & Sons Ltd** does this as the customer's agent. The customer shall indemnify **E Hayes & Sons Ltd** for any liability or cost incurred by **E Hayes & Sons Ltd** in providing this service, and shall pay **E Hayes & Sons Ltd** the amount of such liability or cost immediately upon receiving notice from **E Hayes & Sons Ltd** of such amount (except where the parties agree in writing that **E Hayes & Sons Ltd** is responsible for such costs).

3.2 **E Hayes & Sons Ltd** may deliver the goods by instalments, and each instalment shall be treated as a separate contract under these standard terms and conditions of sale.

3.3 If **E Hayes & Sons Ltd** fails to deliver or makes defective delivery of part of the goods, this does not entitle the customer to cancel the separate contract for that particular instalment (if applicable), or the contract for all of the goods or any other contract.

3.4 Any time stated for delivery is an estimate only. **E Hayes & Sons Ltd** is not liable for any delay in delivery.

4. RISK AND OWNERSHIP

4.1 Risk of any loss, damage or deterioration of or to the goods passes to the customer on delivery in accordance with clause 3.1.

4.2 Subject to clause 5.1 and the following provisions, ownership of the goods remains with **E Hayes & Sons Ltd** and does not pass to the customer until the customer:-

(a) pays the amount owing and any other moneys owing by the customer to **E Hayes & Sons Ltd** from time to time, whether in relation to any contract entered into on these standard terms and conditions of sale or on any other account whatever ("customer's indebtedness"); or

(b) resells the good pursuant to the authority granted by these terms.

4.3 Where goods are processed prior to repayment of the customer's indebtedness, ownership of those products and/or such part or parts as are identifiable as being substantially derived from goods supplied by **E Hayes & Sons Ltd** ("processed goods") shall remain with **E Hayes & Sons Ltd** until the earlier of payment of the customer's indebtedness or such time as such processed goods have been sold by the customer pursuant to these standard terms and conditions of sale.

4.4 While ownership of the goods or processed goods remains with **E Hayes & Sons Ltd**:-

(a) the customer must store them separately and clearly identify them as belonging to **E Hayes & Sons Ltd**;

(b) **E Hayes & Sons Ltd** authorises the customer in the ordinary course of its business to use the goods and the processed goods or sell them for full consideration. This authority is revoked at the time that:-

(i) an event of default occurs; or

(ii) **E Hayes & Sons Ltd** notifies the customer in writing that this authority is revoked.

(c) as the customer's agent, **E Hayes & Sons Ltd** may enter the premises where the goods or processed goods are stored and remove them, without being responsible for any damage caused in doing so. **E Hayes & Sons Ltd** may resell any of the goods or processed goods and apply the proceeds of sale in reduction of the customer's indebtedness; and

(d) the customers must advise **E Hayes & Sons Ltd** immediately of any event of default or any action by third parties (including any of its creditors) affecting **E Hayes & Sons Ltd's** interest in the goods or the processed goods.

4.5 **E Hayes & Sons Ltd** may apply any payments received from or on behalf of the customer in reduction of the customer's indebtedness as **E Hayes & Sons Ltd** thinks fit.

4.6 If the customer resells or uses any goods or processed goods before ownership of the goods or the processed goods has passed to the customer, the proceeds of such sale or use shall be received and held by the customer (in whatever form) in trust for both the customer and **E Hayes & Sons Ltd**. **E Hayes & Sons Ltd's** interest as beneficiary under that trust shall be that portion of the proceeds equal to the customer's indebtedness to **E Hayes & Sons Ltd** and in the event that the proceeds of sale are less than the debt to **E Hayes & Sons Ltd** then the entire proceeds of sale. The balance of the proceeds (if any) shall be the customer's beneficial interest under that trust.

4.7 **E Hayes & Sons Ltd** may bring an action for the price of the goods or processed goods sold even where ownership of the goods or any processed goods may not have passed to the customer.

5. SECURITY INTEREST

5.1 Notwithstanding clause 4, the parties acknowledge that from the date the Personal Property Securities Act 1999 came into force (pursuant to section 1 of that Act), the customer grants **E Hayes & Sons Ltd** a security interest over all of the goods delivered to the customer after that date.

6. PERSONAL PROPERTIES SECURITIES ACT

6.1 The customer acknowledges and agrees that in consideration of the supply of goods on these terms and conditions, the customer grants to **E Hayes & Sons Ltd** a first ranking security interest under the Personal Property Securities Act 1999 in each and every supply of goods made by **E Hayes & Sons Ltd** to the customer to secure to **E Hayes & Sons Ltd** the purchase price and the obligations in these terms of trade.

6.2 In the event of any default by the customer under these terms of trade, **E Hayes & Sons Ltd** shall be entitled to exercise all the rights of a secured party under the PPSA.

6.3 The customer will sign any further documents or provide any further information to enable **E Hayes & Sons Ltd** to register a financing statement or financing change statement on the PPSA register.

6.4 The customer will not register a financing change statement or change demand without the prior written consent of **E Hayes & Sons Ltd**.

6.5 The customer will give **E Hayes & Sons Ltd** not less than 14 days prior written notice of any proposed change in the customer's name or other details.

6.6 The customer waives its right to receive verification statement in respect of any financing statement or any financing change statement relating to the security interest.

7. GUARANTEES

7.1 If the goods are acquired by the customer for business purposes, the customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those goods.

7.2 Where the customer supplies the goods to a person acquiring them for business purposes, it must be a term of the customer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

7.3 The customer acknowledges that **E Hayes & Sons Ltd** does not provide any express guarantees (as defined in the Act) other than those expressly confirmed by **E Hayes & Sons Ltd** in writing.

7.4 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract between the customer and **E Hayes & Sons Ltd**, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:-

(a) any right which the customer may have to reject non-conforming or defective goods shall only be effective if the customer notified **E Hayes & Sons Ltd** in writing within seven days following delivery and **E Hayes & Sons Ltd** is given the opportunity to inspect the goods;

(b) defective goods or goods which do not comply with the order shall at **E Hayes & Sons Ltd's** discretion be repaired or replaced, or **E Hayes & Sons Ltd** will refund the price. **E Hayes & Sons Ltd** may, at its discretion, delay the repair or replacement of, or refund of the price of, any goods for so long as the customer is in default in relation to the customer's indebtedness.

7.5 To the extent permitted by law, **E Hayes & Sons Ltd** accepts no liability for any claim by the customer or any other person, including without limitation any claim relating to or arising from:-

(a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;

(b) any representations, warranties, conditions or agreement made by any agent or representative, or by the customer, which are not expressly confirmed by **E Hayes & Sons Ltd** in writing, and the customer agrees to indemnify **E Hayes & Sons Ltd** against any such claim. In any event, **E Hayes & Sons Ltd's** liability under any claim shall not exceed the price of the goods.

7.6 The customer agrees to indemnify **E Hayes & Sons Ltd** upon demand against any liability or cost incurred by **E Hayes & Sons Ltd** under the Consumer Guarantees Act 1993 as a result of any breach by the customer of any of its obligations pursuant to these standard terms and conditions of sale.

7.7 Nothing in these standard terms and conditions of sale is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these standard terms and conditions of sale are to be modified to the extent necessary to give effect to that intention.

8. DEFAULT

8.1 If an event of default occurs:-

(a) **E Hayes & Sons Ltd** may suspend or terminate any contract; and

(b) the amount owing shall immediately become due and payable notwithstanding that the due date has not arisen; and

(c) **E Hayes & Sons Ltd** is entitled to recover from the customer all costs that **E Hayes & Sons Ltd** may incur in attempting to collect the amount owing and any other moneys owing by the customer to **E Hayes & Sons Ltd** from time to time, whether in relation to any contract or on any other account whatsoever.

8.2 If the customer does not pay the amount owing by the due date:-

(a) **E Hayes & Sons Ltd** may charge the customer a penalty of 2.5% per month calculated on a daily basis on the unpaid portion of the amount owing from due date until payment in full is received; and

(b) any discounts may be disallowed.

8.3 If the customer is in default the remedies provided above shall apply as well as all other remedies at common law or otherwise available to **E Hayes & Sons Ltd**. The customer shall be liable for any losses, costs, expenses and liabilities incurred by **E Hayes & Sons Ltd** in exercising its remedies and the customer hereby agrees to fully indemnify **E Hayes & Sons Ltd** in respect of any such losses, costs, expenses and liabilities. It is also hereby agreed by the customer and/or guarantor that **E Hayes & Sons Ltd** shall have the right and liberty to complete and have registered a **MORTGAGE** over any property owned by the customer and/or guarantor to secure monies owed by the customer and **E Hayes & Sons Ltd** shall also have the right at its discretion to place a caveat on any such property for the purpose of this provision and the customer and/or guarantor hereby irrevocably appoints **E Hayes & Sons Ltd** as the attorney of the customer and/or guarantor for the purpose of executing such mortgage.

9. PAYMENT VALIDITY

9.1 The customer acknowledges that **E Hayes & Sons Ltd** continues to supply the customer on condition that all payments received by **E Hayes & Sons Ltd** from the customer are valid and made in the ordinary course of the customer's business.

9.2 The customer further acknowledges that **E Hayes & Sons Ltd** receives all payments in the ordinary course of the customer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the customer gives notice in writing to **E Hayes & Sons Ltd**:-

(a) of the customer's then inability to pay its due debts; and

(b) that the customer's intention or purpose in making any such payment is to enable **E Hayes & Sons Ltd** to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the customer,

and until receipt of such notice, **E Hayes & Sons Ltd** shall be entitled to assume that all payments received from the customer are made in the ordinary course of the customer's business.

10. FORCE MAJEURE

10.1 Without limiting any other provisions of these standard terms and conditions of sale, neither **E Hayes & Sons Ltd** or the customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these standard terms and conditions of sale or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event. Nothing in this clause shall excuse payment of the amount owing as it becomes due under these standard terms and conditions of sale.

10.2 The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the force majeure event, and either party claiming to be affected by the force majeure event shall give immediate notice to the other party containing full particulars of the force majeure event. The party giving notice under this clause shall take all reasonable steps to mitigate the effect of the force majeure event and remove such force majeure event provided that neither party shall be required to remove any such force majeure event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

11. USE OF INFORMATION

12.1 The customer agrees that **E Hayes & Sons Ltd** may obtain information about the customer from the customer or any other person (including debt collection agencies) in the course of **E Hayes & Sons Ltd's** business, including credit assessment, debt collecting and direct marketing activities, and the customer consents to any person providing **E Hayes & Sons Ltd** with such information.

11.2 The customer agrees that **E Hayes & Sons Ltd** may use any information it has about the customer relating to the customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency for credit assessment and debt collection purposes. The customer agrees that any other information collected by **E Hayes & Sons Ltd** about the customer is accessed or collected for the use by **E Hayes & Sons Ltd** in the course of its business, including direct marketing activities.

11.3 The customer must notify **E Hayes & Sons Ltd** of any change in circumstances that may affect the accuracy of the information provided by the customer to **E Hayes & Sons Ltd**. If the customer is an individual, (i.e. a natural person) the customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which **E Hayes & Sons Ltd** holds about the customer.

12. OTHER AGREEMENTS

12.1 Subject to clause 12.2, if there is any inconsistency between these standard terms and conditions of sale and any order submitted by the customer (whether in writing, verbally or by electronic data interchange (EDI)) or any other arrangement between the parties, these standard terms and conditions of sale prevail unless otherwise agreed in writing by the parties.

12.2 Where the parties have entered into a credit arrangement on terms other than those detailed in clause 2.1 ("alternative credit arrangement"), then, to the extent the alternative credit arrangement is inconsistent with these standard terms and conditions of sale, the alternative credit arrangement prevails.

13. WAIVER

13.1 If **E Hayes & Sons Ltd** exercises or fails to exercise any right or remedy available to it, this shall not prejudice **E Hayes & Sons Ltd's** rights in exercising that or any other right or remedy. Waiver of any term of these standard terms and conditions of sale must be specified in writing and signed by an authorised office of **E Hayes & Sons Ltd.**

14. DIMENSIONS, PLANS AND SPECIFICATIONS

14.1 All customary building industry tolerances shall apply to the dimensions and measurements of goods unless **E Hayes & Sons Ltd** and the customer agree otherwise in writing.

14.2 **E Hayes & Sons Ltd** shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the customer.

14.3 If the giving of an estimate or quotation for the supply of goods involves **E Hayes & Sons Ltd** estimating measurements and quantities, it shall be the responsibility of the customer to verify the accuracy of such estimate before accepting such quotation.

14.4 Should the customer require any changes to **E Hayes & Sons Ltd's** estimated measurements and quantities, the customer shall request such changes in writing, in the case of an estimate, before placing an order based on that estimate, and in the case of a quotation, before acceptance of that quotation.

14.5 Where the customer requests changes to be made to estimated quantities or measurements after **E Hayes & Sons Ltd** has accepted the customer's order in writing, the price shall be appropriately adjusted and any estimated delivery date rescheduled.

15. PRODUCT RETURNS

15.1 Subject to clause 4.2, where **E Hayes & Sons Ltd** at its discretion allows the customer to return goods other than defective or non-complying goods, **E Hayes & Sons Ltd** reserves the right to charge a return fee equal to 10% of the price of such goods.

15.2 Where a customer orders goods utilising **E Hayes & Sons Ltd's** special order form, then, to the extent the special order form is inconsistent with these standard terms and conditions of sale, the special order form prevails.

16. ASSIGNMENT

16.1 **E Hayes & Sons Ltd** is entitled at any time to assign to any other person all or part of the debt owing by the customer to **E Hayes & Sons Ltd**.

17. REVIEW OF TERMS

17.1 **E Hayes & Sons Ltd** reserves the right to review any of these standard terms and conditions of sale at any time and from time to time. If, following any such review, there is to be any change to such terms and conditions, that change will take effect from the date on which **E Hayes & Sons Ltd** notifies the customer of such change.

18. TRUSTEE LIABILITY

18.1 If the customer is a trust, and that trust has a professional trustee or trustees, then the liability of that or those professional trustees shall be limited to the assets of the relevant trust. However, this shall not affect the liability of a professional trustee who has guaranteed the customer's obligations under these standard terms and conditions of sale in his or her personal capacity.

19. WORDS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE

19.1 "**E Hayes & Sons Ltd**" means E Hayes & Sons Ltd including its successors and assigns.

19.2 "Amount owing" means the price charged by **E Hayes & Sons Ltd** for the goods, and any other sums which **E Hayes & Sons Ltd** is entitled to charge under these standard terms and conditions of sale.

19.3 "Claims" includes any claim:-

(a) for damages of any kind, including, but not limited to damages for breach of contract;

(b) for loss of profits; or

(c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:-

(i) any breach of **E Hayes & Sons Ltd's** obligations under these standard terms and conditions of sale; or

(ii) any cancellation of any contract; or

(iii) any negligence, misrepresentation or other act or omission by **E Hayes & Sons Ltd** or its employees, agents or contractors; or

(d) for compensation, demand, remedy, liability or action.

19.4 "Customer" means the person purchasing the goods from **E Hayes & Sons Ltd** pursuant to these standard terms and conditions of sale, including that person's successors and assigns.

19.5 An "event of default" means an event where:-

(a) the customer fails to comply with these standard terms and conditions of sale or any other contract with **E Hayes & Sons Ltd**; or

(b) the customer commits an act of bankruptcy; or

(c) the customer enters into any composition or arrangement with its creditors; or

(d) if the customer is a company:-

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

(ii) a resolution is passed or an application is made for the liquidation of the customer; or

(iii) a receiver or statutory or official manager is appointed over all or any of the customer's assets.

19.6 "Force majeure event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these standard terms and conditions of sale, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of either party.

19.7 "Goods" means all goods ordered by the customer and supplied by **E Hayes & Sons Ltd** from time to time under these standard terms and conditions of sale (as detailed on each invoice issued to the customer) and includes any services forming part of the supply of such goods.

19.8 "Person" includes a corporation, association, firm, company, partnership or individual.

19.9 "Price" means the purchase price of the goods and any costs payable by the customer under clauses 1 and 3.1 of these standard terms and conditions of sale.

19.10 References to the Personal Property Securities Act 1999, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

PERSONAL GUARANTEE

TO: E Hayes & Sons Limited ***("the company")***

IN CONSIDERATION of the company agreeing at my/our request to supply

_____ ***("the buyer")*** with goods and/or services on credit I/We

_____ ***("the guarantor")*** hereby undertake and agree with the

company as follows:-

1. I/We shall be answerable to and responsible to the company for due payment by the buyer for all such goods and/or services as may be supplied from time to time by the company to the buyer, together with all interest charges and recovery costs charged by the company to the buyer.
2. This agreement shall be a continuing guarantee to the company for all debts whatsoever and whensoever contracted by the buyer in respect of all goods supplied to the buyer by the company and the obligations under this guarantee shall not be affected by any of the following:-
   (a) Any indulgence or extension of time given to the buyer or any variation of the terms of contract as between the company and the buyer.
   (b) The death or bankruptcy or winding up of the buyer or any of the guarantors hereunder.
   (c) The buyer's liability under the contract for supply being or becoming invalid illegal or unenforceable through any act or omission or in terms of any legislation:
   (d) The release or discharge of or any indulgence extended to any of the guarantors by the company.
3. The guarantor agrees that the company shall have the right and liberty to complete and have registered a **mortgage** over any property owned by the guarantor to secure monies owed by the buyer or the guarantor and the company shall also have the right to place a caveat on any such property for the purpose of this provision and the guarantor hereby irrevocably appoints the company as the guarantor's attorney for the purpose of executing such mortgage.
4. In the event of there being more than one guarantor, then the obligations of the guarantors shall be joint and several and the liability of the parties executing the guarantees shall not be affected by the refusal or failure of any of the intended guarantors to sign the guarantee.
5. Although as between the buyer and the guarantor, the guarantor may be surety only, yet as between the guarantor and the company the guarantor shall be deemed to be a principal debtor and shall not be released by any matter or thing the happening of which would otherwise release one liable as a surety only.

DATED the _____ day of _____ 20_____

Signed by: _____ **Also print name** _____

In the presence of _____ **Also print name** _____

Witness Address _____

_____