



APPLICATION FOR CREDIT

Full Legal Name

Trading As

Number of Years Trading

Type of Business Limited Liability Company Partnership Sole Trader Incorporated Body Other

If a Limited Liability Company – address of registered office

Contact Accounts Person

Position

Circle address for service of Notices

Postal Address

Courier Address

Email Address

Phone

Fax

Nature of Business

Bank

Branch and Address

Accountant

Solicitor

Paid Up Capital

Partner/Directors Name

Private Address

1.

2.

3.

Credit References (excluding utilities companies)

Company Name

Telephone

A/c No.

1.

2.

3.

I/we hereby apply for credit with Everest Group Limited (EGL) and agree to EGL obtaining such information directly from the above and any other party as deemed necessary in regard to ascertaining my/our credit standard. I/we agree to the Terms and Conditions of Sale as attached.

For and on behalf of

(Name of Client)

Authorised Signature

Print Name

Date



PERSONAL GUARANTEE OF INDEBTEDNESS

(Limited Liability/Trust Applicants only)

To: Everest Group Limited (“EGL”)

In consideration of EGL giving credit to the Client in accordance with the attached Application for Credit, at the guarantor’s request, the guarantor:

1. Guarantees that the client will perform all of the Client’s obligations set out in the Application for Credit which includes the Terms and Conditions of Sale and any Project Agreement.
2. Acknowledges and agrees:
 - (a) this guarantee is a continuing all obligations guarantee; and
 - (b) is given jointly and severally (where there is more than one guarantor); and
 - (c) will continue to be binding and at all times enforceable by EGL even if the client dies, is placed in liquidation, or bankruptcy or if any amendments are made to the Application for Credit, Terms and Conditions of Sale or Project Agreement.
3. EGL may release or discharge any of the guarantors from liability under this guarantee (or may compromise its claim against any such guarantors) without prejudicing EGL’s rights against others.
4. The guarantor(s) acknowledge that they were advised to take independent legal advice before signing this guarantee.

Dated the day of 201

Full Name(s) of Guarantor(s):

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Address of Guarantor(s):

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Signature(s) of Guarantor(s):

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Witness(es)

Signed in the presence of:

.....

.....

Occupation

Occupation

.....

Address

.....

Address

Client’s initials.....

1. General

This agreement outlines general terms and conditions of sale for services provided by Everest Group Limited (EGL). In this agreement "Parties" means EGL and the Client and, "the Client" means the person named as the Client in EGL's Application for Credit or a person that has engaged EGL to provide services. For the avoidance of doubt, "services" may include the provision of software. Execution of this agreement shall be deemed to be acceptance by the Client of these terms and conditions of sale ("Terms"). EGL reserves the right to change and update these Terms from time to time. If changes are made, the new terms will be updated on our website. Changes may include variations to pricing if required by EGL to pass on increased direct supplier costs such as software. Where appropriate EGL shall provide an additional project agreement outlining the conditions of sale for a specific project ("Project Agreement"). A Project Agreement, once entered into, may be varied only by mutual, written agreement between the Parties and signed by the authorised representatives of the Parties. In the event of any conflict the conditions of the Project Agreement shall prevail over these Terms.

2. Quotations

'Quotation' means any EGL written quotation, and 'Contract Price' means either the price payable for the services that are the subject of EGL's Quotation and/or Variation or, if no Quotation has been given or is applicable, then 'Contract Price' means EGL's current normal price for the services at the time of supply of services. 'Variation' means any variation to a Quotation agreed upon between EGL and the Client and recorded in writing. The Contract Price is exclusive of GST which is payable in addition to the Contract Price. A Variation shall take precedence over the part of the Quotation affected by the Variation, and shall form part of the Contract Price. Where no Quotation has been given by EGL to the Client, no binding contract shall arise unless and until either EGL accepts in writing an order from the Client or EGL performs the services as the case may be. A Quotation is valid for 30 days from the date of the Quotation. After acceptance of the Quotation by the Client, where EGL has not commenced provision of the services within 60 days of the date of Quotation (other than solely as a result of delays on the part of EGL), EGL may, at any time prior to commencing the work, revise the Quotation to take into account any increases in costs as a result of the delay.

3. Contract Price and Payment

Unless otherwise agreed in a Project Agreement, EGL shall invoice the Client, and the Client agrees to pay such invoices as follows:

- (i) Annual HRtools and 0800 support – an invoice shall be generated immediately with payment due prior to provision of the services.
- (ii) Training and workshops, – for **Lump Sum Payment** an invoice shall be generated immediately with payment due within 7 days or prior to training taking place, whichever is earlier. For **12 Monthly Instalment Payments** (only available for Business Success Training Packages) an invoice will be issued each month with payment due the 20th of the month following date of invoice.
- (iii) CV Development, when this service is provided for an individual, 50% deposit is payable prior to commencement of work. Balance is due prior to CV being supplied to the individual. With career coaching, an invoice will be issued on completion of coaching, and is payable within 7 days.
- (iv) For all other services an invoice shall be generated upon completion of the work or, if the work is ongoing EGL may generate a monthly progress invoice, with payment due by the 20th of the month following date of invoice.

The date upon which any payment is due in accordance with this clause is the "Due Date". Time is of the essence in respect of all terms relating to payment of the Contract Price and payment shall not be deemed to have been received by EGL until honoured.

4. Finish Date

EGL shall use all reasonable endeavours to complete a fixed-term project by the finish date as agreed between the Parties, but shall not be held liable for delays or other failures due to events or circumstances beyond the reasonable control of EGL and, in particular, any failure by the Client to provide EGL with the resources or such other information or services as are reasonably required under this agreement.

5. Notices

Any notices pursuant to this agreement, shall be given in writing and delivered to the Parties at the addresses provided as contacts for notices for each Party in the attached Application for Credit.

6. Acknowledgement of Risk

EGL has the knowledge and skills reasonably required to undertake the services provided. In providing the services, EGL shall exercise the degree of skill, care and diligence normally expected of a competent professional organisation. The Client acknowledges the inherent risk involved in the services undertaken and that EGL cannot guarantee, nor is any warranty given, that any particular result shall be achievable. The Client understands and agrees that the services provided may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the Client.

7. Liability

EGL has no liability for any consequences of the Client acting on information, advice and knowledge provided by EGL. The Client agrees that EGL, its employees, agents or contractors shall not be liable to the Client for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the services and goods performed and supplied under this agreement. The provisions of this clause and clause 6 shall apply regardless of the form of

action, damage, claim, liability, costs, expense or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

8. Confidentiality

EGL recognises that in its capacity as a professional business advisor to the Client, EGL may be privy to confidential or commercially sensitive information regarding the Client's business. EGL undertakes that it shall restrict access to this information to its employees or agents or contractors on a strictly "need to know" basis and shall not make use, or seek to make use, of such information, except for the purposes of providing EGL's services to the Client.

9. Conflict of Interest

EGL shall advise the Client as soon as practicable of any conflict of interest which it becomes aware of. If the Client does not consent to the provision of services continuing in view of such conflict then the services may be terminated in accordance with Clause 17.

10. Specific Consent Requirements

EGL is responsible for all consents required (including, without limitation, statutory and ethical consents) to implement this agreement.

11. Intellectual Property

All intellectual property which is owned by or licensed to a Party at the date of this agreement shall remain owned by or licensed to that Party exclusively. Any new intellectual property which is created as a result of, or in connection with, the provision of services under this agreement, is to be owned as specified by separate agreement or if not specified shall be owned by the Client. The Client shall make the intellectual property available to EGL for use in accordance with such reasonable conditions as the Client may place upon EGL. EGL may seek the Client's consent to use the results of any project for research, promotional and educational purposes and the Client agrees that its consent shall not be unreasonably withheld.

12. Copyright

All intellectual property of EGL including written systems, templates, procedures and other such written works provided to the Client by EGL are subject to copyright protection under the Copyright Act 1994 and the Client shall not copy or in any way distribute such material outside the organisation named in this agreement, or deal with it in any other way restricted by copyright.

13. Publicity

All publicity related to services provided by EGL must be approved by the Parties. Neither Party shall use the name of the other Party in relation to these services or in any endorsement without written permission from the other Party.

14. Health and Safety at Work Act 2015 ("Act")

EGL shall not assume any obligations as the Client's agent which may be imposed on the Client pursuant to the Act and arising out of this agreement.

15. Overdue Accounts

Without prejudice to EGL's other rights and remedies, if the Contract Price or any instalment of the Contract Price is not paid in full by the Due Date, EGL may revoke and withdraw any discount agreement between EGL and the Client; charge the Client default interest calculated on a daily basis on the amount outstanding from the Due Date for payment until payment in full at a rate of 10% per calendar month; suspend performance of the services under the contract with the Client (without any liability for such suspension), and charge the Client on a full indemnity basis (including legal costs and expenses on a solicitor/client basis) the cost of bringing legal proceedings, or debt collection proceedings to recover or attempt to recover any moneys due and owing to EGL or to recover or attempt to recover other damages for breach of contract by the Client.

16. Dispute

Notice of dispute shall be given in writing. EGL and the Client shall in good faith attempt to resolve the dispute. This process may include mediation. If the dispute is not resolved within 20 working days from the date the dispute was advised in writing, then the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996.

17. Termination

If either Party wishes to terminate a Project Agreement for the provision of on-site support, two weeks' notice shall be given in writing. In any case where the relationship has been terminated EGL shall invoice the Client for any services provided, up to the date of termination. The Client shall pay such invoices in accordance with Clause 3 of this agreement. Where the Client is paying in 12 Monthly Instalment Payments in accordance with clause 3(ii) of this Agreement the termination of the Project Agreement does not terminate the Client's obligation to pay for the training and workshop in full. For the avoidance of doubt non completion of the Training and Workshop will not excuse the Client from payment of the full annual payment amount. EGL is entitled to immediately cancel this agreement and any Project Agreement with the Client in the event of the Client going into liquidation, receivership, voluntary administration or, if an individual, becoming bankrupt. EGL will be entitled to cancel in these circumstances without prejudice to any rights that may have accrued to it to the date of cancellation.

Customised workshops/courses/programmes – If you cancel your event booking within 7 days of the event start date, no refund, total cost applies (including workbook printing costs if incurred). An alternative date may be agreed if we are notified within 14 days prior to the event date. If event cancellation is received by EGL within 14 days of event start date, 50% of the agreed cost plus any workbook printing costs incurred will be due immediately.

18. Personal Property Securities Act 1999 (“PPSA”)

EGL and the Client acknowledge that these Terms constitute a security agreement as defined under the PPSA. For the purposes of the PPSA, collateral includes services and the proceeds of their sale. The Client agrees that EGL has a security interest in all of the Client’s present and after-acquired property where EGL has provided services to the Client, that EGL may register a financing statement on the Personal Properties Securities Register to protect its security interest.

19. No direct engagement of EGL’s contractors

Unless otherwise agreed in writing, the Client agrees not to engage directly or indirectly (on the Client’s own behalf or otherwise) any of EGL’s contractors or to accept any business from any of EGL’s contractors acting on their own behalf:

- (i) during the course of this agreement, any Project Agreement with EGL, and any extension of either this agreement or any Project Agreement; and
- (ii) for six months after the date on which this agreement or any Project Agreement and any extension of either, ends.

For the avoidance of doubt, in this clause EGL’s contractors means any person who EGL has engaged at any time during the course of this agreement or any Project Agreement and, any extensions of this agreement or any Project Agreement, with the Client (or that EGL has introduced to the Client). The Client acknowledges that the constraints detailed in this provision are reasonable and necessary to protect and maintain EGL’s proprietary interests and other legitimate interests of EGL’s business. The Client further acknowledges that the services provided by EGL under this agreement and any Project Agreement represent reasonable and sufficient consideration for the constraints contained within this clause. In the event of any breach of this clause, the Client agrees to pay a recruitment fee to EGL of \$5,000 + GST in respect of every contractor that the Client directly or indirectly engages in breach of this clause or that the Client accepts business from in breach of this clause. EGL shall generate an invoice immediately on EGL becoming aware of the breach, and will be payable within 7 days.

20. Consumer Guarantees Act

The Client agrees and acknowledges that where the Client is acquiring the services (for itself or its principal) from EGL for the purposes of a business the provisions of the Consumer Guarantees Act 1993 do not apply.

21. Jurisdiction

This agreement is governed by New Zealand law and the New Zealand courts have jurisdiction in respect of this agreement.

22. Privacy Act 1993

The Client irrevocably authorises any person or company to provide EGL with such information as it may require in the course of its credit inquiries. The Client further authorises EGL to collect and hold such information and to furnish such information to any third party together with details of any credit application form completed and any transactions that the Client may have with EGL.

23. Waiver

If EGL delays or does not exercise any of its rights or remedies under these Terms and Conditions of Sale or, otherwise at law, that will not be a waiver of any of its rights or remedies. Any waiver that EGL gives the Client must be in writing and will be effective only in the specific instance and for the specific purpose for which it was given.

24. Severability

If any part of these Terms is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.

Client's initials.....