

THE LITTLE CAKE KITCHEN LTD

41A Elizabeth Knox Place, St Johns

P: 09 356 3668

info@littlecakekitchen.co.nz

WHOLESALE ACCOUNT APPLICATION FORM

LEGAL NAME (Not trading name):("the customer")

Please tick: Sole Trader Individual Partnership Limited Company Other.....

Trading as:

Contact: Phone Number:

Accounts Contact: Phone Number:

Email:

Delivery Address:

Postal Address:

Owner(s)/Directors(s)

Full Name: Full Name:

Address: Address:

Phone Number: Phone Number:

Limited Liability Company

Incorporation Number: Date of Incorporation:

Address of Registered Office:

TRADE REFERENCES

Company	Contact Name	Contact Phone Number

I/We have read and agree to be bound by the terms and conditions of trade as attached. I/We warrant to The Little Cake Kitchen Limited that the above information is to the best of my/our true and correct and that I/we am/are duly authorized to enter into this application and future contracts on behalf of the Customer. I/we agree to notify The Little Cake Kitchen Ltd of any change of ownership pertaining to this account in writing. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

Signed

Name

Designation

Dated thisday of.....20.....

TERMS: 7 days from receipt of invoice. Payments can be made by direct credit only. If you fail to settle your account on time you may be liable for any debt collection costs incurred.

If the Applicant is a company then this application form must be signed by a director of the company.

Please complete this form in full. Missing information may result in your application being declined.

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of The Little Cake Kitchen Limited and its successors and assigns ("The Little Cake Kitchen") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Client") *[Insert Company Name In Box Provided]*

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to The Little Cake Kitchen of all moneys which are now owing to The Little Cake Kitchen by the Client and all further sums of money from time to time owing to The Little Cake Kitchen by the Client in respect of goods and services supplied or to be supplied by The Little Cake Kitchen to the Client or any other liability of the Client to The Little Cake Kitchen, and the due observance and performance by the Client of all its obligations contained or implied in any contract with The Little Cake Kitchen, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to The Little Cake Kitchen the Guarantor will immediately on demand pay the relevant amount to The Little Cake Kitchen. In consideration of The Little Cake Kitchen agreeing to supply the Goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to The Little Cake Kitchen registering any interest so charged. The Guarantor irrevocably appoints The Little Cake Kitchen and each director of The Little Cake Kitchen as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which The Little Cake Kitchen may reasonably require to:

- (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (b) register any other document required to be registered by the PPSA or any other law; or
- (c) correct a defect in a statement referred to in clause 1(a) or 1(b).

2. **HOLD HARMLESS AND INDEMNIFY** The Little Cake Kitchen on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, The Little Cake Kitchen in connection with:

- (a) the supply of goods and/or services to the Client; or
- (b) the recovery of moneys owing to The Little Cake Kitchen by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to The Little Cake Kitchen's nominees costs of collection and legal costs; or
- (c) moneys paid by The Little Cake Kitchen with the Client's consent in settlement of a dispute that arises or results from a dispute between, The Little Cake Kitchen, the Client, and a third party or any combination thereof, over the supply of goods and/or services by The Little Cake Kitchen to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood The Little Cake Kitchens Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**

4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to The Little Cake Kitchen by the Client and all obligations herein have been fully paid satisfied and performed.

5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on The Little Cake Kitchens part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to The Little Cake Kitchen, each Guarantor shall be a principal debtor and liable to The Little Cake Kitchen accordingly.

6. If any payment received or recovered by The Little Cake Kitchen is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and The Little Cake Kitchen shall each be restored to the position in which they would have been had no such payment been made.

7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.

8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to The Little Cake Kitchen.**

9. I/we irrevocably authorise The Little Cake Kitchen to obtain from any person or company any information which The Little Cake Kitchen may require for credit reference purposes. I/We further irrevocably authorise The Little Cake Kitchen to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with The Little Cake Kitchen as a result of this Guarantee and Indemnity being actioned by The Little Cake Kitchen.

10. The above information is to be used by The Little Cake Kitchen for all purposes in connection with The Little Cake Kitchen considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1	GUARANTOR-2
SIGNED:	SIGNED:
FULL NAME:	FULL NAME:
HOME ADDRESS:	HOME ADDRESS:
DATE OF BIRTH:.....	DATE OF BIRTH:.....
SIGNATURE OF WITNESS:.....	SIGNATURE OF WITNESS:.....
NAME OF WITNESS:.....	NAME OF WITNESS:.....
OCCUPATION:	OCCUPATION:
PRESENT ADDRESS:	PRESENT ADDRESS:
EXECUTED as a Deed this day of 20____	EXECUTED as a Deed this day of 20____

1. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE

SIGNING IT

The Little Cake Kitchen Terms and Conditions

1. Definitions

- 1.1 "LCK" means The Little Cake Kitchen Limited, its successors and assigns or any person acting on behalf of and with the authority of The Little Cake Kitchen Limited.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Ceres to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between LCK and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with LCK consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and LCK.

3. Change in Control

- 3.1 The Client shall give LCK not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by LCK as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At LCK sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by LCK to the Client; or
- (b) LCK quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 LCK reserves the right to change the Price if a variation to LCK quotation is requested.
- 4.3 At LCK sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by LCK, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by LCK.

- 4.5 Payment may be made by cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and LCK.

- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to LCK an amount equal to any GST LCK must pay for any supply by LCK under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that LCK (or LCK nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At LCK sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then LCK shall be entitled to charge reasonable fee for redelivery and/or storage.
- 5.4 LCK may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by LCK to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and LCK will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, LCK is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by LCK is sufficient evidence of LCK rights to receive the insurance proceeds without the need for any person dealing with LCK to make further enquiries.
- 6.3 If the Client requests LCK to leave Goods outside LCK premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

7. Title

- 7.1 LCK and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid LCK all amounts owing to LCK; and
- (b) the Client has met all of its other obligations to LCK.
- 7.2 Receipt by LCK of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to LCK on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for LCK and must pay to LCK the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for LCK and must pay or deliver the proceeds to LCK on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of LCK and must sell, dispose of or return the resulting product to LCK as it so directs.
- (e) the Client irrevocably authorises LCK to enter any premises where LCK believes the Goods are kept and recover possession of the Goods.
- (f) LCK may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of LCK.
- (h) LCK may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by LCK to the Client (if any) and all Goods that will be supplied in the future by LCK to the Client.
- 8.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which LCK may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, LCK for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of LCK; and
- (d) immediately advise LCK of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.3 LCK and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by LCK, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by LCK under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1 In consideration of Ceres agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the

joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

9.2 The Client indemnifies Ceres from and against all LCK costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising LCK rights under this clause.

9.3 The Client irrevocably appoints LCK and each director of LCK as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Client's Disclaimer

10.1 The Client hereby disclaims any right to rescind, or cancel any contract with LCK or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by LCK and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

11. Defects

11.1 The Client shall inspect the Goods on delivery and shall within one (1) day of delivery (time being of the essence) notify LCK of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford LCK an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which LCK has agreed in writing that the Client is entitled to reject, LCK liability is limited to either (at LCK discretion) replacing the Goods or repairing the Goods.

11.2 Goods will not be accepted for return other than in accordance with 11.1 above.

12. Warranty

12.1 To the extent permitted by statute, no warranty is given by LCK as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. LCK shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

13. Consumer Guarantees Act 1993

13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by LCK to the Client.

14. Intellectual Property

14.1 Where LCK has designed or developed Goods for the Client, then the copyright in any designs and documents shall remain the property of LCK.

14.2 The Client warrants that all designs, specifications or instructions given to LCK will not cause LCK to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify LCK against any action taken by a third party against LCK in respect of any such infringement.

14.3 The Client agrees that LCK may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs or Goods which LCK has created for the Client.

15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at LCK sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Client owes LCK any money the Client shall indemnify LCK from and against all costs and disbursements incurred by LCK in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, LCK collection agency costs, and bank dishonour fees).

15.3 Without prejudice to any other remedies LCK may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions LCK may suspend or terminate the supply of Goods to the Client. LCK will not be liable to the Client for any loss or damage the Client suffers because LCK has exercised its rights under this clause.

15.4 Without prejudice to LCK other remedies at law LCK shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to LCK shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to LCK becomes overdue, or in LCK opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

16.1 Ceres may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice LCK shall repay to the Client any money paid by the Client for the Goods. LCK shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by LCK as a direct result of the cancellation (including, but not limited to, any loss of profits).

16.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Act 1993

- 17.1 The Client authorises LCK or LCK agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by LCK from the Client directly or obtained by LCK from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

17.2 Where the Client is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.

17.3 The Client shall have the right to request LCK for a copy of the information about the Client retained by LCK and the right to request LCK to correct any incorrect information about the Client held by Ceres.

18. Unpaid Seller's Rights

18.1 Where the Client has left any item with LCK for repair, modification, exchange or for LCK to perform any other service in relation to the item and LCK has not received or been tendered the whole of any moneys owing to it by the Client, LCK shall have, until all moneys owing to LCK are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

18.2 The lien of LCK shall continue despite the commencement of proceedings, or judgment for any moneys owing to Ceres having been obtained against the Client.

19. General

19.1 The failure by LCK to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect LCK right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

19.3 LCK shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by LCK of these terms and conditions (alternatively LCK liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by LCK nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 LCK may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.6 The Client agrees that LCK may amend these terms and conditions at any time. If LCK makes a change to these terms and conditions, then that change will take effect from the date on which LCK notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for LCK to provide Goods to the Client.

19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.