



Martella Refrigeration & Air Conditioning
PO Box 809, Blenheim 7240
1 Freswick Street, Blenheim 7201
Phone 03 578 0030 / Fax 578 0031
E-mail: office@martella.co.nz

ACCOUNT APPLICATION FORM

Full Legal Name:		
Trading As:		
Incorporation No:		
Postal Address:		
Delivery Address:		
Telephone:	Cellphone:	Fax:
Date Business Commenced:	E-mail:	
Principal Owners and/or Directors:		
1. Title:	Residential Address:	
2. Title:	Residential Address:	
3. Title:	Residential Address:	
Purchaser:	Accountant:	
Manager:	Estimated monthly purchases:	
Trade References:		
Name:	Address:	Telephone:
1.		
2.		
3.		

A. MARTELLA LIMITED
("Martella")

CONDITIONS OF TRADE

1. Application of these Conditions

These Conditions of Trade apply to all contracts for the supply of goods and/or services by Martella and the purchaser or recipient of any such goods and/or services ("the Buyer").

2. Entire Agreement

These Conditions of Trade constitute the entire agreement between Martella and the Buyer for the supply of the goods and/or services specified and the Buyer acknowledges that they shall apply to the exclusion of any standard terms or conditions of trade of the Buyer. No modifications, alterations or additions to these conditions shall form part of the contract unless accepted by Martella in writing. To the fullest extent permitted by law all conditions and warranties (whether as to quality, fitness or any other matter whatsoever) expressed or implied by statute, common law, equity, trade, custom or usage, or otherwise howsoever are hereby expressly excluded.

3. Formation of Contract

Any quotation or tender submitted by or on behalf of Martella shall be valid for 30 days from the date of quotation or tender unless otherwise stated.

4. Price

All prices given are ex-works unless otherwise stated and are based on the cost ruling at the time of quotation including (where relevant) rates of freight, insurance, duty, wages, sales tax, goods and services tax, cost of materials and components and also rates of exchange and rates of conversion from foreign currencies to New Zealand currency and vice versa. Martella reserve the right to vary the contract price at any time before or after the formation of the contract to take account of any variation in the items referred to above or any of them or any variation or modification in the contract approved by the Buyer or any variation imposed by any circumstance beyond the control of Martella. Any price so varied shall be payable by the Buyer as if it were the original price.

5. Performance

Performance of the contract by Martella is subject to Martella being able to obtain all supplies, licences, permits and the like necessary to enable Martella to obtain any goods or materials required for completion of the contract.

6. Delivery

Delivery, unless otherwise specified in writing, is to be made at Martella's work, ex the factory door. Where delivery is specified as f.o.b. or f.o.r. delivery is complete on offer of the goods for carriage to vessel or to freight forwarder as the case may require. Rejection, refusal or default on the part of the Buyer to accept delivery shall constitute delivery and acceptance.

7. Time

Dates of delivery shall not be of the essence of the contract and Martella shall not be liable for any loss, expense, injury, damage or claim whatsoever or howsoever arising resulting from any delay in delivery howsoever such delay is caused.

8. Risk and Title

- (a) The risk in the contract goods shall pass to the Buyer upon delivery as defined.
- (b) Ownership in the contract goods shall not pass upon delivery and is expressly retained by Martella until such time as the Buyer has discharged all outstanding indebtedness whatsoever to Martella whether in respect of the contract goods or in respect of any other goods or otherwise.
- (c) The Buyer acknowledges and agrees that until payment in full of such indebtedness has been made:
 - (i) The contract goods are held by the Buyer in a fiduciary capacity as bailee.
 - (ii) The Buyer shall, if directed by Martella store the contract goods in such a way that it is clear that they are the property of Martella and all costs of storage (whether such storage is at the direction of Martella or not) shall be for the account of the Buyer.
 - (iii) Martella, its agents and servants may at any time without the necessity of giving any notice enter on and into any premises occupied by the Buyer or break and enter on and into any such premises to inspect, search for or remove any of the contract goods without in any way being liable to the Buyer or any person claiming through the Buyer and if the contract goods or any of them are wholly or partially attached to or incorporated in any other items, Martella, its agents and servants may in its or their absolute discretion removes or detach the contract goods in any manner whatsoever without in any way being liable to the Buyer or any person claiming through the Buyer for any damage which may thereby be caused to those other items.
 - (iv) The contract goods will not be sold by the Buyer to a third party except within the frame work of the normal carrying on of the business of the Buyer and then only upon the basis that the entire proceeds of any resale of the contract goods or any rights of action in respect of any such resale up to the level of the indebtedness of the Buyer to Martella shall pass to and be the absolute property of Martella.
 - (v) The Buyer shall not manufacture any new product, object or material from the contract goods except upon the basis that the sole legal, beneficial and equitable property and ownership of any such new product, object or material so manufactured shall at the time of incorporation of the contract goods pass to and vest in and thereafter remain with Martella notwithstanding the incorporation of any other goods or the costs incurred by the Buyer in incorporating the same and all of the other provisions of this clause shall apply mutatis mutandis in respect of the new product, object or material so manufactured.
- (d) Nothing in this clause shall be construed as allowing the Buyer to return any or all of the contract goods because they are surplus to requirements or for non-payment or for any other reason whatsoever.
- (e) Any costs incurred by Martella in exercise of the powers hereunder whether relating to the repossession, storage or resale of the contract goods or otherwise (including legal costs as between Martella and its Solicitors) shall be immediately due and payable by the Buyer to Martella.

9. Warranty

- (a) Martella will repair or replace as it shall in its sole discretion think fit any part of the contract goods which has been manufactured by Martella and which proves to be faulty during the warranty period by reason only of defective materials or defective workmanship.
- (b) If any defect becomes evident within the warranty period in any part of the contract goods not manufactured by Martella, Martella will use its best endeavours to obtain for the Buyer the benefit of any guarantee or warranty given by the manufacturer of such part but shall otherwise be under no liability whatsoever in respect of the contract goods.
- (c) In this context "warranty period" means the period of time specified in the tender or quotation commencing on the date of delivery of the contract goods. If no period of time is specified in the tender or quotation then the warranty period is deemed to be a period not exceeding 6 (six) months.
- (d) Martella shall not be liable to repair or replace any part of the contract goods or to use its best endeavours as aforesaid as the case may be unless and until it is satisfied that the goods have since delivery been used, installed, operated and maintained in accordance with good engineering practice and any instructions or advice given by Martella or the manufacturer of any parts or the contract goods and that any defect is not attributable to improper or inadequate storage of the contract goods or any part thereof or storage thereof for more than three months. In the event of Martella incurring expenditure as a result of any failure on the part of the Buyer then Martella shall be entitled to charge for such remedial work or investigatory work based upon the Martella standard systems engineering charges then prevailing for customer work.
- (e) Martella shall incur no liability pursuant to this clause unless the Buyer notifies Martella forthwith upon any defect occurring and unless the Buyer provides Martella promptly with all information concerning the contract goods, such defect and the use, installation, maintenance and storage thereof since delivery as Martella may reasonably require.
- (f) In no circumstances whatsoever shall Martella be liable for damage, injury or loss of any kind whatsoever to any property or persons or animals or produce howsoever caused arising from fault or defect in the contract goods or arising by way of consequential loss or damage.
- (g) The cost of removing or dismantling any defective part, its carriage to and from Martella's premises, its testing by Martella (except where the part proves to be faulty by reason of defective materials or defective workmanship) and its reinstallation shall be borne by the Buyer.
- (h) Save its aforesaid Martella shall be under no liability to the Buyer in respect of the description, quality, fitness for any purpose of the contract goods and all terms, conditions and warranties in respect of such description, quality or fitness whether statutory or otherwise and whether express or implied are hereby expressly excluded.

10. Payment

Unless otherwise provided for in this contract the Buyer shall pay the contract price of the contract goods and any other costs, charges or expenses provided for by these conditions forthwith upon delivery of the goods or for approved credit accounts with Martella by the 20th of the month following the month in which delivery is made. At any time before completion of the contract and as a condition precedent to the performance or further performance by Martella of the contract Martella may request the Buyer to produce evidence in a form and nature acceptable to Martella of the buyer's ability to pay all moneys which may be or become due to Martella under the contract and if the Buyer shall fail to produce such evidence in accordance with such request the Buyer shall be deemed to have made default under the contract and Martella shall be entitled (but without prejudice to any other remedy it may have) to rescind the contract.

11. Interest

In the event that the Buyer does not pay any sum on due date, the Buyer, being in default, shall pay upon demand to Martella (as liquidated damages) interest at the rate of 2% per annum above the then current overdraft rate being charged by Martella's bank on all overdue amounts calculated monthly on the total unpaid balance including any interest previously charged from the due date until the actual date of payment. The charging of interest does not imply the granting of any extension of credit.

12. Damage or Shortage of Delivery of Goods

If the goods or any part thereof are delivered in a damaged condition or if there is a shortage of delivery the Buyer shall advise Martella accordingly within three days of such delivery or where delivery f.o.b. or f.o.r. is specified within 28 days thereof and shall confirm the same to Martella within four days thereafter otherwise Martella will be under no responsibility for such damage or shortage of delivery.

13. General Liabilities

Martella shall not be liable for any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the contract or the contract goods, or their design, manufacture, installation, use, operation or maintenance except as provided elsewhere in these Conditions and the Buyer shall indemnify Martella in respect of any such loss, injury, damage, expense or claim suffered by or made against Martella.

14. Disputes

In the event of any liability of whatsoever nature being established against Martella in any way whatsoever for which a specific remedy is not otherwise given in these Conditions Sections 6 - 10 inclusive of the Contractual Remedies Act are hereby expressly excluded and the Buyer's sole remedy for misrepresentations or repudiation or breach of contract for any of the other matters to which Sections 6 - 10 inclusive relate shall be damages and such damages shall be limited to the sum of 10 per centum of the price mentioned in the Tender.

15. Law

This contract shall be governed by New Zealand Law and shall be construed in all respects as a New Zealand contract.

We understand the above terms and conditions and accept them.

(Director Name).....

Signed.....

Date

Personal Guarantee

I personally guarantee the company's performance of the attached terms of trade and agree to personally guarantee the payment of all monies owing now or hereafter to A Martella Ltd by the company or partnership.

Signed:

Witness Signature:

Dates:

Witness name & address:

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For office use only

Date checked:

Authorised: