

# ACCOUNT APPLICATION

Registered Company Name:	Trading Name:
Billing Address: PO Box / Street .....	Shipping Address: Street .....
Suburb .....	Suburb .....
City/Town ..... Post Code .....	City/Town ..... Post Code .....
Company Incorporation No:	Company / Sole Trader / Partnership / Trust (circle one)
Accounts Contact:	Web Nominated Person:
Accounts Phone:	Web Persons Email:
Accounts Fax:	Web Persons Phone:
Accounts Email:	Nature of Business:
Sales Contact:	
Sales Phone:	Other Instructions / Comments:
Sales Email:	

Accountant:	Ph:
Solicitor:	Ph:
Bank:	Ph:
Trade Ref 1:	Ph:
Trade Ref 2:	Ph:
Trade Ref 3:	Ph:

Names of Directors / Partners / Principals:	
Name:	Name:
Position:	Position:
Private Address:	Private Address:
A/H Phone:	A/H Phone:

By signing this document, I certify that the information provided is true and correct and that I am authorised to make this account application. The Customer must promptly inform Bmobile Solutions Ltd ("Bmobile") if there are any material changes to any of the information stated in this account application. In accordance with the Privacy Act (1993) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understand the Terms and Conditions of Sale for Bmobile Solutions Limited which form part of and are intended to be read in conjunction with this account application and agree that these Terms and Conditions of Sale shall apply to all transactions between the Customer and Bmobile Solutions Limited.

The signatory to this Account Application guarantees the obligations of the Customer as set out in the attached Terms and Conditions of Sale.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Proprietor / Partner / Director / Authorised Signatory) Circle One

Full Name: \_\_\_\_\_ Position: \_\_\_\_\_

Office Use Only:			
Sales: /	Credit Check:	Admin:	Account No:
Date:	Date:	Date:	CRM:

## **General**

Any order accepted by Bmobile Solutions Ltd (hereinafter called "the Company") shall be deemed to incorporate these Terms and Conditions of Sale. No variation or modification of, or substitution for these Terms and Conditions of Sale (even if included in, or referred to in, the document placing the order) shall be binding on the Company, unless previously and specifically accepted by the Company in writing. Acceptance of these trading terms does not necessarily imply access to all the Company's products. Certain products are classified as Authorised Products and are not available to all the Company's Customer's. The Company may make changes to these Terms and Conditions of Sale (including any credit terms) from time to time by notice to the Customer. The Customer is treated as having accepted the changed terms if it sends an order to the Company after receiving its notice of those changes.

## **Prices**

Unless otherwise agreed in writing by the Company, the Company reserves the right to vary the price stated for the Goods in order to take account of any increase in shipping costs, product costs or cost of materials, services or exchange rate fluctuations between the date of the Customer's order and the date of the Company's invoice. All prices listed are GST exclusive unless otherwise stated and subject to change without notice. The Company reserves the right to accept or reject any Purchase Order, whether written or verbal, at its discretion.

## **Payment**

Terms of payment are prior to delivery. Payment may be made by Cheque, Credit Card (MasterCard, Visa or American Express), or Direct Credit. Credit terms may be offered to an approved Customer when a satisfactory trading history has been established. The Customer warrants that as far as it is aware it or any of its owners are not insolvent. The Customer acknowledges that the Company may in its absolute discretion, approve or refuse to extend any credit to the Customer. If credit is extended to a Customer, the company may reduce or withdraw any credit extended to the Customer and require it to immediately pay all moneys owed to the company if the Customer: (i) breaches any of the Terms and Conditions of Sale; or (ii) in the Company's reasonable opinion, may be or is suffering from an insolvency event. In addition to any right or lien to which the Company may be by law entitled, the Company shall (in the event of the Customer's insolvency or going into receivership) be entitled to a general lien on all Goods of the Customer in the Company's possession (although such Goods or some of them may have been paid for) for the unpaid price of any Goods sold and delivered to the Customer by the Company under the same or any other contract. Without prejudice to any other rights of action the Company may have, unless payment is made to the Company on the due date for payment, the Customer's account will be automatically suspended until it is brought within the trading terms (unless otherwise arranged and confirmed in writing by the Company such as a bona fide dispute). The Customer agrees to pay interest to the Company on all overdue charges at the rate of one and one half percent (1.5%) per month payable monthly (or such lesser rate as the Company may specify in writing) from the due date for payment until actual payment thereof, excepting any bona fide dispute which has been set aside. In the event of an account not being paid by the due date the Customer will pay to the Company all debt collection agency costs and legal fees (on a solicitor and client basis) incurred by the Company in obtaining payment of the amount from the Customer. In addition interest is payable on such debt collection agency costs and legal fees at the cumulative rate of 1.5% per month calculated monthly from the date on which they are paid by the Company until payment of the same by the Customer to the Company.

## **Assignment**

An order and any payments to be made in relation to it shall not be assigned or transferred without the prior written approval of the Company.

## **Delivery**

Delivery will be made to the location specified on the order form and the Customer shall be liable for all freight costs. No claim for damage in transit or shortage in delivery will be considered in cases where the Company has agreed to deliver the Goods to the Customer unless a separate notice in writing is given to the carrier concerned and the Company immediately the Goods are received followed by detailed and complete claim in writing within two (2) trading days of delivery. In the event of loss or destruction of the Goods in transit, advice of non-delivery must be submitted in writing to the carrier and to the Company within seven (7) days of the date of consignment as advised by the Company to the Customer. Any period or dates quoted for delivery are to be regarded as approximate only and the Company accepts no liability for any loss, injury damage or expenses consequent upon any delay in delivery of Goods. Delay due to circumstances not reasonably within the control of the Company shall not entitle the Customer to cancel any order or to refuse to accept delivery. Notwithstanding that the title to the Goods may not have passed, the risk in the Goods shall pass to the Customer upon delivery. When the Company is required to procure overseas Goods to fulfil an order the order is subject to confirmation by the Company and it is also subject to an import licence being available when required.

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### **Force Majeure**

Should the Company be delayed in or prevented from making delivery owing to any cause whatsoever beyond the Company's control, such as Act of God, war, strike, riots, government intervention, industrial stoppage or natural disaster or otherwise, the Company shall be at liberty to cancel or suspend the order without incurring any liability for any loss or damage resulting there from.

### **Insurance**

Insurance will not be affected by the Company on Goods forwarded from the Company's premises unless the Company receives written instructions from the Customer to insure.

### **Cancellation of Order**

Once an order has been accepted and invoiced by the Company it may not be cancelled for any cause whatsoever without the Company's consent in writing. Where such cancellation is agreed, the Customer will cover all costs in returning the Goods to the Company and ensure that the Goods are insured in transit and returned to the companies premises in original unmarked packaging including all original documentation and accessories. Such an order cancelled by the Customer will incur a re-stocking fee of a minimum of \$30.00, or fifteen percent (15%) of the invoiced value of the Goods, whichever is the greater. Upon a Customer placing a special order or an indent order of Goods that are of a special nature or quantity, the Customer will be deemed to have invited the Company to allocate or order Goods or production time for its fulfilment and to have agreed that the Customer's order will be irrevocable pending acceptance or rejection by the Company within a reasonable time.

### **Returns**

Before returning any Goods, an RMA (Return Merchandise Authorisation) number must be requested and issued. Goods will not be accepted, credited or replaced without the RMA number stated on the returned Goods. Consumable items are not eligible for credit or return unless otherwise agreed by the Company in writing. Unauthorized returns will not be shipped back to sender except at their expense (a handling fee may also apply). The Customer may return authorised items using the shipping method of its choice and are responsible for the return shipping charges. The Company recommends that the Customer insures the return shipment as the Company cannot be responsible for damaged or lost shipments. Used or otherwise altered items not in new condition are not eligible for credit. All returns must be received within 45 days of the original order or a credit cannot be issued. Upon receipt of your returned items the Company will inspect them return them to inventory if in new unused condition and issue the Customer with the credit according to the conditions of Cancellation of Order.

### **Ownership**

The risk in any Goods supplied by the Company to a Customer shall pass to the Customer when such Goods are delivered to the Customer or into custody on the Customer's behalf. Until the Customer has discharged all outstanding indebtedness to the Company in respect of all Goods, the Company retains ownership in all Goods delivered to the Customer or into custody on the Customer's behalf (**Retained Goods**). Until payment in full of such indebtedness for all Goods has been made to the Company, the Customer acknowledges and agrees that: (i) it holds the Retained Goods as fiduciary and bailee agent for the Company; (ii) it will store, at all times, the Retained Goods separately from its or any 3rd party's goods so that they remain identifiable; (iii) it will not encumber or allow any charge or security interest over the Retained Goods; (iv) it will insure the Retained Goods; and (v) the Company is permitted to enter into the Customer's premises without prior notice to inspect and/or repossess the Retained Goods, and to keep or resell any of the Retained Goods repossessed. If the Customer manufactures, intermingles or deals with the Retained Goods in such a manner that they become an integral part of any other object (**Processed Goods**) then the Customer holds these Processed Goods on trust for the Company to the extent the Retained Goods are incorporated or used to produce the Processed Goods, until payment in full of such indebtedness for all Goods has been made to the Company. Unless otherwise directed by the Company, the Customer may, on behalf of the Company, sell the Retained Goods and Processed goods to a third party in the normal course of trade. The Customer is accountable to the Company for the proceeds derived from the sale of Retained Goods, and in the case of Processed Goods, to the extent the Retained Goods are incorporated or used to produce the Processed Goods. The Customer shall hold such proceeds in trust for the Company in a separately identifiable account for the Company's benefit and must give the proceeds to the Company when asked. The Customer must maintain separate records in relation to the Retained Goods and Processed Goods, and make these records, Retained Goods, and Processed Goods available for the Company's inspection at any time on reasonable notice to the Customer.

### **Evaluation Product**

The Company will make Evaluation Product available to the Customer from time to time, to allow the Customer to evaluate product features and benefits prior to purchasing. Evaluation Product is to be returned to the Company within 7 working days unless purchased prior. Returned product is to be shipped freight paid by the Customer, either outer wrapped or packaged so as to preserve the packaging. Any missing marked or damaged product, manuals or accessories, will be charged in full on return. Evaluation Product not returned according to these conditions will be charged in full at the end of the evaluation period. Freight will not be charged on Evaluation Product that is returned within the 7 day evaluation period. Insurance and return freight on the Evaluation Product is the responsibility of the Customer.

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## Hosted Software Service

- **Features:** Mobile application functionality is upgradeable at any time
- **Calendar Month:** Please note that the Company only deals in whole calendar months, so all usage is for an entire month.
- **Billing :** Charging is quarterly in advance. Payment due by the 20<sup>th</sup> day of the first month of the period.
- **Mobile data:** The customer is responsible for their own mobile data activation and associated usage charges.
- **User Cancellation:** Users can be cancelled for future months on one quarter (3 months) notice. Cancellations cannot be verbal but must be via a faxed and signed "Bmobile Registered Users" form.
- **Contract Cancellation:** Customers can commence and stay on a quarter to quarter plan which allows cancellation "this month" to be effective for the end of the next quarter. However, if receiving discounted rates for a term contract, cancellation requires a 2 quarter penalty to be paid in addition to the notice period.
- **Administration Charges:** the Company charges \$25 to create, change or cancel user profiles, after the initial set-up of profiles at the commencement of the contract term.

## Confidentiality

From time to time the Company and the Customer may be required to pass on to each other confidential information about their respective business or the Customer may be required to pass on to the Company confidential information about their Customer in relation to their Customer's business to the Company for the commercial benefit of both parties. Any such information given by either party will be held by the other party in strict confidence and will not be passed on to any third party or used for any other purpose other than the direct related purpose to which the information was given. Confidential information excludes information which is: (i) lawfully in the public domain before its disclosure or enters the public domain afterwards otherwise than as a result of an unauthorised disclosure; (ii) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis; and (iii) is rightfully known by the receiving party before disclosure of it. No public announcement or press release relating to the Company or the Company's products is allowed without the Company's prior written consent, which will not be unreasonably withheld.

## Warranty

All products carry a twelve month, return to base, parts and labour warranty unless otherwise stated. Damage caused by misuse or abuse, electrical damage due to power fluctuations such as surges or spikes, incompatible consumables or software, are not covered under warranty. Consumables or incorrect operation of any product according to the manufacturers recommendations, are not covered under warranty. Proof of Purchase is to be supplied with all warranty claims. Where an extended warranty is taken on a product, unless otherwise stated in writing, the scope of that warranty will be as per the standard warranty for the extended period taken. An extended warranty may only be taken on new products and cannot be taken retrospectively. Any payment for extended warranty must be made at the time of the original product purchase.

## Web Access

The Company's web site, [www.bmobile.co.nz](http://www.bmobile.co.nz), provides the Customer with access to product details and pricing, along with other information helpful to the Customer as a user of the Company's products. For the avoidance of doubt, these Terms and Conditions of Sale apply to all orders placed by the Customer on the Company via the Bmobile web ordering portal. The Company reserves the right to restrict access to the web ordering portal at any time without prior notice to the Customer.

## Liability

To the maximum extent permitted by law, the Company shall not be liable for any damages or loss of any kind arising from the failure of Goods to function or operate satisfactorily, nor for any direct or indirect, incidental, special, or consequential damage or loss to property or person whatsoever. The Company accepts no responsibility or liability for incorrect placement of orders, including via the web. Any representation, warranty, condition or undertaking that would be implied in these Terms and Conditions of Sale by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions of Sale excludes, restricts or modifies any condition, warranty, right or remedy that cannot be excluded, restricted or modified. The Company's liability for any other liability that has not been excluded, or breach of a condition or warranty that cannot be excluded, is limited, at the Company's option, to re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing Goods. The Company's liability will exclude any indirect, incidental, special or consequential damages or loss, including loss of revenue, profits, savings or data. It does not matter whether the damage or loss was foreseeable, arose from negligence, and even if warning was given of its possibility.

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**Personal Property Securities Act 1999**

The Customer grants to the Company a security interest in the Goods supplied by the Company and their proceeds and accessions to secure payment of the purchase price of the Goods and all outstanding debts and obligations of the Customer to the Company. The Company will provide such information, do such acts and execute such further documents as in the Company's opinion may be necessary or desirable to enable the Company to perfect under the PPSA the security interest created by these terms and conditions as a first priority interest or with such other priority as the Company may agree in writing. The Customer will supply the Company within 7 business days of written request copies of all documents granting security interests registered over the Customer's property. The Customer authorises the Company as an agent to request copies of all documents granting security interests registered over the Customer's property. The Customer authorises the Company as an agent to request any information from any secured party relating to any security interest which is held in any property which is or has been in the Customer's possession or control. The Customer will immediately notify the Company in writing of any change in the Customer's name. The Customer agrees sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129, 131 to 134 of the PPSA shall not apply to these Terms and Conditions or the security created hereunder and further waives the right to receive a Verification Statement under the PPSA. The Customer must not create or allow or permit the creation of a security interest (as defined in the PPSA) in any of the Company's Goods in favour of any person other than the Company without first obtaining the Company's written consent nor may the Customer allow or permit the creation of a lien over any of the Company's Goods.

**Indemnity**

The Customer will indemnify the Company against any claims by a third party (including merchants), damage, loss, liability or expense (including lawyers' fees on an indemnity basis) that the Company may incur; (i) with respect to any negligent act or omission by, or wilful misconduct of the Customer's employees, agents, contractors, consultants or representatives; or (ii) as a result of; (a) any warranty condition, representation, indemnity or guarantee granted by the Customer or provided by law in addition to or in lieu of the limited warranties specified in the Warranty clause; (b) any omission or inaccuracy in the Customer's marketing and promotional materials that relate to the products; (c) any modification of or addition to the product not provided or approved by the Company; or (d) the Customer's failure to comply with these Terms and Conditions of Sale. This clause will not be construed to limit or exclude any other claims or remedies which the Company may assert under these Terms and Conditions of Sale.

**Severability**

If any term in these Terms and Conditions of sale is illegal or unenforceable, it is to be severed. The rest of the terms will not be effected.

**Governing Law**

Any contract to which these Terms and Conditions of Sale apply shall be governed by and construed in accordance with the laws in force in New Zealand and you further submit to the exclusive jurisdiction of the Courts operating in New Zealand.

**Goods** "Goods" as used in this document means those Goods supplied by the Company and includes but not limited to POS Terminals, POS Printers, Barcode Printers, Barcode Scanners, Scanner Scales, Barcode Verifiers, Cash Drawers, Mobile Computing Terminals, Touch Terminals, Kiosk Terminals, Keyboards, Card Printers, Consumables and Security products.

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