



**Sabato Limited trading as Sabato**

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**Account Application**

**Applicant's full legal name** (i.e. not trading name): ..... ("the applicant")

(Please tick) Ltd Company  Individual  Sole trader  Partnership  Other (please state): .....

Trading as: ..... Postal address: .....

Physical address: .....

Nature of business: ..... Years in business: .....

Contact name & position: ..... Email: .....

Phone No: ..... Mobile No: ..... Fax No: .....

Date of Birth (Please provide copy of passport or motor vehicle licence): .....

Accounts Payable Contact: ..... Email .....

**If a limited liability company** - address of registered office: .....

Date of incorporation: ..... Incorporation no: .....

**Ownership:** Full details of Directors:

1 Name: ..... Address: ..... Phone no: .....

2 Name: ..... Address: ..... Phone no: .....

**Financial & professional advisors**

Name of accountant: ..... Solicitor: .....

Bank: ..... Branch: ..... Acct No: .....

Trade References			
Company	Contact name	Phone number	Account open since

**General description of services to be provided:** .....

**I warrant to Sabato Limited trading as Sabato:**

1. that the above information is to the best of my knowledge, information and belief true and correct; and
2. that I have carefully read and agree to be bound by the terms and conditions as printed overleaf; and
3. that I am duly authorised to make this credit account application on behalf of the applicant and of anyone duly authorised to enter into future contracts on behalf of the applicant.

**I also acknowledge that pursuant to the personal guarantee contained in the terms and conditions that I am also signing this application form in my personal capacity.**

Signed ..... Print name ..... Position .....

Dated this ..... day of ..... 20

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

**Trade Account Applications – Minimum monthly spend of \$150 pre GST and freight required to maintain an account.**

# SABATO LTD TERMS OF TRADE

1. **What is the purpose of this agreement?**
  - 1.1 This agreement sets out the terms that apply to the relationship between you (and "your") and **Sabato Limited** trading as **Sabato** ("we", "us" and "our").
2. **What information about you can we collect?**
  - 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement, the provision of our products and performance of our services.
  - 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
    - to give effect to our products and services;
    - to enforce our obligations under this agreement or an additional agreement;
    - when authorised by you or required by law;
    - to assess credit worthiness; and
    - to market any of our products and services.
  - 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access any of your information and ask us to correct any mistakes.
3. **What are our products and services?**
  - 3.1 "Product(s)" and "service(s)" means and includes without limitation:
    - all consumables, food, beverages, ingredients, machines, equipment, units, and materials and accessories;
    - import, export, manufacture, distribution, supply, delivery and retail; and
    - agency fees, charges and out of pocket expenses incurred by us,identified in any document or electronic record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or identifiable as ours by marking or a manner of storage enabling identification.
4. **What is the price?**
  - 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses such as freight. If no price is stated, the price will be the cost that we provide the products and services at the time of your order. The price is subject to reasonable change due to circumstances such as changes in regulations, currency and third party freight fluctuations.
5. **When and how do you pay us?**
  - 5.1 You agree to pay us in full:
    - for credit account holders - payment on or before the 20th day of the month following the date of our invoice, unless otherwise stated;
    - for those without a credit account - payment in advance of delivery or pick up of the products;
    - interest on any amount you owe after the due date at a rate of 2.5% per month or part month;
    - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR, debt collection and legal fees; and
    - without set-off, deduction or counterclaim.
  - 5.2 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
  - 5.3 You will be responsible for payment if a third party that you expect to pay you or us fails to pay.
6. **What warranties apply?**
  - 6.1 Manufacturer warranties and written warranties provided by us.
  - 6.2 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 to the extent permissible by law.
  - 6.3 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control.
  - 6.4 Subject to any applicable insurance and limitations under 6.1-6.3, if we are deemed liable to you for loss or damage of any kind, arising from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, then you agree that our total liability is limited to the value of the products and services provided to you.
7. **What ownership and security rights do we have?**
  - 7.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you.
  - 7.2 After delivery and whilst we retain any interest in the same you must store all products in such a way that our interests are protected and they can be identified as provided by us.
  - 7.3 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:
    - authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
    - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
    - waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
    - that both parties contract out of ss 114(1)(a), 133 and 134 of the PPSA;
    - waive your rights as listed under s 107(2) of the PPSA; and
    - to give us fourteen (14) days prior written notice of any proposed change in your name or details such as contact information.
  - 7.4 We own all existing and new intellectual property rights connected to the products and services. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions. You may use the products only if paid in full and for the purpose for which they were intended and supplied by us.
8. **What if an issue or dispute arises in relation to our products and services?**
  - 8.1 If an issue arises in relation to products that have been delivered, such as incorrect or short supply, then you must notify us in writing with forty-eight (48) hours of receipt. Non-notification is deemed to be acceptance of the products.
  - 8.2 Subject to any applicable warranties, products that are supplied on indent or are perishable cannot be returned.
- 8.3 Return of products for reasons other than under warranty are at our discretion, subject to:
  - you being responsible for the cost of return including delivery;
  - the products having been used in accordance with the manufacturer's/our storage instructions and guidelines and not having been subject to abuse, neglect, misuse, accident or services of any unauthorised third party; and
  - the products being in original saleable condition.
- 8.4 Any products the subject of 8.1-8.3 must not be destroyed or removed until we have inspected the products or a photograph of the product or required they be returned to us or waived such right.
9. **When will the products and services be provided?**
  - 9.1 We are responsible for the products until they are delivered or picked up by you, whichever comes first.
  - 9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at your premises or delivery address. The time of delivery is not an essential term of our agreement.
  - 9.3 Though we will use our best endeavours to avoid unexpected delays, delivery may be delayed due to back orders, transportation methods, supplier stock levels and production schedules. We may partially deliver products listed in one order or invoice without added cost to you. If the parties agree on delivery by instalments and we fail to deliver an instalment, the failure will not give rise to a right of cancellation.
  - 9.4 Risk for the products lies with us until delivery in accordance with 9.2, pick up or when ownership passes in accordance with 7.1, whichever comes first.
10. **What if you want to vary an order?**
  - 10.1 All variations to an order must be notified to us in writing within twenty four (24) hours of you placing the order and we must agree to the same in writing. Where we have reasonably relied on your original instructions, you will be responsible for payment of the original price of the products and services.
11. **When can a party cancel this agreement?**
  - 11.1 Subject to 11.2-11.5, either party may cancel all or any part of this or any agreement at any time by giving twenty one (21) days prior written notice.
  - 11.2 We have the right by fourteen (14) days prior written notice to suspend or cancel all or any part of this or any agreement for the provision of products and services if you default by:
    - failing to pay or indicating you will not pay any sum owing by the due date;
    - any of your creditors seizing or indicating they will seize any products provided to you;
    - products in your possession becoming materially damaged while any amount is unpaid;
    - being bankrupted, insolvent, under statutory management or put into liquidation;
    - a receiver being appointed over or a landlord possessing any of your assets;
    - a court judgment entered against you remaining unsatisfied for seven (7) days;
    - breaching the terms of this agreement; and
    - an adverse material change in your financial position.
  - 11.3 If you default we may exercise a lien against any products in our possession.
  - 11.4 You agree that if you default and the default is not remedied within fourteen (14) days of occurrence, we may enter any premises occupied by you to inspect or retrieve any products and may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
  - 11.5 Cancellation under 11.1 or cancellation or suspension under 11.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become due and current orders will terminate.
12. **Does a personal guarantee apply?**
  - 12.1 If you are a director of a company or the trustee of a trust:
    - in exchange for us agreeing to supply products and services and grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
    - any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.
13. **What else is agreed?**
  - 13.1 If the products are delivered to you fixed with labels from both the manufacturer(s) and us and all or part of the information on such labels is conflicting, then the information on the manufacturer(s) label will prevail and must be followed.
  - 13.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
  - 13.3 Neither party may assign or transfer their rights or obligations under this agreement to any other without our prior written consent.
  - 13.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
  - 13.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you will be subject to this agreement.
  - 13.6 Documentation related to this agreement may be served on you by email.
  - 13.7 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will firstly endeavour to resolve the dispute by negotiation. If the dispute is not resolved within seven (7) working days then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996.
  - 13.8 We will notify you of any changes to these terms and post the same on our website. Continued provision of products and services to you will be subject to your signed or written acceptance of the changes. All other variations must be mutually agreed in writing.
  - 13.9 This agreement is governed by the laws of New Zealand.