



834 Arcade Street, St. Paul, MN 55106 USA
Phone 651.209.0665 Fax 651.778.8080

"ClimbingForKids.com" Institutional Pricing Application

This Application must be signed, and the person signing this form must have the proper authority to represent the person or business entering into this Agreement.

Company Name/School District _____ Web Site _____

School Name (if not going through district) _____ Web Site _____

Billing Address _____

City _____ State _____ Zip _____

SHIP to address (if additional schools, please attach a sheet listing each of the Ship To addresses and contact names and numbers) _____

City _____ State _____ Zip _____

Phone Number (_____) _____ Fax Number (_____) _____

Climbing Wall Contact Name _____ Title _____ Phone (_____) _____

Wall Contact email address _____ (note: we do not sell our customer information)

Accounts Payable Contact _____ Phone (_____) _____

Years in business _____ Federal ID # _____ State Tax Exempt# _____

How did you hear about ClimbingForKids.com? _____

Authorized Buyers (Complete Name) and their title (These will be the only people that will be able to place orders.) _____

Purchase Orders are required by mail, fax, or email when ordering.

CIRCLE ONE: School/Government Corporation Partnership Proprietorship Limited Liability Corp. Other _____

Please provide a brief description of your business and how you will be using "Climbing For Kids" products and/or services.

By signing and submitting this application to ClimbingForKids.com, a division of Nicros, Inc., the above-named company and all of its officers, shareholders, employees, agents, affiliates, successors and assigns agree to the following: (1) that the person signing this Application is authorized to execute this Application and bind the above-referenced individuals and entities to the terms and conditions of this Application including the terms and conditions of this paragraph; (2) that in consideration of being accepted as a wholesale buyer of ClimbingForKids.com, a division of Nicros, Inc., products and being allowed to purchase products from ClimbingForKids.com, a division of Nicros, Inc. at a discount each of the above-named individuals and entities agrees to release Nicros, Inc. "Climbing For Kids", its officers, shareholders, employees, agents, affiliates, successors and assigns from any and all liability for injuries or damages that may result from the installation or use of said products; and (3) that in consideration of being accepted as a dealer or wholesale buyer of ClimbingForKids.com, a division of Nicros, Inc., products and being allowed to purchase products from ClimbingForKids.com, a division of Nicros, Inc. at a discount each of the above-named individuals and entities agrees to indemnify and hold ClimbingForKids.com, a division of Nicros, Inc., and its officers, shareholders, employees, agents, affiliates, successors and assigns harmless from any and all claims, losses, liability and damages (including attorneys' fees and costs) that they may suffer as a result of claims arising out of the installation or use of ClimbingForKids.com, a division of Nicros, Inc. products.

Signature _____

Date _____

Print _____

Initial Here

“Climbing For Kids”, a division of Nicros, Inc.
Institutional Pricing Application
INSTRUCTION SHEET - TERMS AND CONDITIONS

1. Complete the Institutional Pricing Application and return all four (4) pages (including initials at the bottom) to apply for institutional pricing (the pricing pictured on ClimbingForKids.com). This must be complete and approved prior to first order being shipped.
2. In the event that your Net-30 credit account becomes past due, ClimbingForKids.com, a division of Nicros, Inc., may, at its discretion, place your account on *Credit Hold*. Purchase orders received, will not be processed until account is paid according to the Open Account Agreement terms.
3. ClimbingForKids.com, a division of Nicros, Inc., reserves the right to make price changes at any time without notice.
4. Failure to comply with the above terms can result in loss of account pricing status with ClimbingForKids.com, a division of Nicros, Inc.
5. Warranty - ClimbingForKids.com, a division of Nicros, Inc., guarantees that resin products and climbing wall panels purchased from ClimbingForKids.com, a division of Nicros, Inc., will be free from defects in materials and workmanship for a period of one year from the date of purchase, or for as long as owned by the original purchaser, whichever is shorter. Please note that improper installation of these products may void warranty. See ClimbingForKids.com, a division of Nicros, Inc. warranty statement which can be found on the internet at www.nicros.com or www.climbingforkids.com. If you find what you believe to be a defect with our products, please immediately discontinue use of the product and return it to us promptly with your original receipt and an explanation. This warranty does not cover damage caused by normal wear or over-tightening of resin products. Breaking due to alteration or misuse voids this warranty.
6. Most climbing gear/hardware of a protective nature is not returnable for obvious safety reasons.
7. You agree to pass on all Important Safety and Warranty Information to the individual/s responsible for your climbing wall. Climbing is an inherently dangerous and potentially hazardous activity. Seeming small and insignificant mistakes may have catastrophic results. Individuals and organizations using products distributed by ClimbingForKids.com, a division of Nicros, Inc., bear the responsibility of learning the proper techniques and safety procedures required for their safe use. You, the purchaser, by signing this institutional pricing application, have taken on all responsibilities of ownership and assume all risks and full responsibility for all damages or injury, including death and disfigurement that may result from the use or misuse of our product.
8. Other rules and terms may apply.
9. By signing this institutional pricing application you agree to comply with these terms.

Initial Here

OPEN ACCOUNT AGREEMENT

THIS AGREEMENT was made and entered into as of _____, 200_____, by and between ClimbingForKids.com, a division of Nicros, Inc., a Minnesota corporation (“Nicros”), and _____, a _____ (COMPANY NAME) corporation (the “Customer”).
(STATE)

Whereas, the Customer desires to purchase certain goods from Nicros on the credit terms (with a purchase order) set forth herein (the “Open Account”); and

Whereas, ClimbingForKids.com, a division of Nicros, Inc. is willing to sell goods to the customer upon the Open Account terms contained in this writing (this “agreement”);

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties hereby agree as follows:

1. **Open Account.** Subject to the provisions in this Agreement, ClimbingForKids.com, a division of Nicros, Inc. hereby extends credit to the Customer for the purpose of purchasing goods from ClimbingForKids.com, a division of Nicros, Inc.. The amount of credit shall be determined by ClimbingForKids.com, a division of Nicros, Inc. from time to time in its sole discretion. The payment terms shall be NET THIRTY (30) days net from the date of Nicros invoice.
2. **Conditions.** ClimbingForKids.com, a division of Nicros, Inc. reserves the right, from time to time, to take the following actions in its sole discretion:
 - a. **Right to Alter Terms.** ClimbingForKids.com, a division of Nicros, Inc. may alter the Open Account credit terms at any time, and for any reason, but only with respect to the *unused* portion of the Open Account. ClimbingForKids.com, a division of Nicros, Inc. shall give the Customer prior written or oral notice of any such decision in this regard.
 - b. **Right to Revoke.** ClimbingForKids.com, a division of Nicros, Inc. may also revoke the Open Account credit at any time, and for any reason, but only with respect to the *unused* portion of the Open Account. ClimbingForKids.com, a division of Nicros, Inc., shall give the Customer prior written or oral notice of any such decision in this regard.
3. **General Terms and Conditions.** The General Terms and Conditions on the back of this page are incorporated herein by reference and made a part of this Agreement. The parties have read these General Terms and Conditions and agree to the incorporation into this Agreement of each of them.
4. **Signature Authority.** Each person signing below represents that (i) he or she has full authority to execute the Agreement on behalf of the party for which he or she has signed; and (ii) the Agreement shall be a binding obligation of such party as soon as the Agreement is so executed by him or her.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first written above.

NICROS, INC.

By: _____
Pam Postma, CFO

CUSTOMER

By: _____

Print Name: _____

Title: _____

Owner / Officer / Signature

Initial Here

OF OPEN ACCOUNT AGREEMENT

WARRANTIES. The following provisions shall apply to any and all goods Nicros sells to the Customer:

- 1.1 **Implied Warranties.** CLIMBINGFORKIDS.COM, A DIVISION OF NICROS, INC. DISCLAIMS ALL IMPLIED WARRANTIES REGARDING GOODS SOLD TO THE CUSTOMER. THE TERM "CUSTOMER" SHALL BE USED IN THIS DOCUMENT TO MEAN ANY BUYER, USER, DISTRIBUTOR, AGENCY, BUSINESS OR FIRM OR ANY OTHER SIMILAR PARTY THAT PURCHASED THE GOODS OR SERVICES FROM NICROS OR ANY OF ITS AGENTS OR AFFILIATES. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
- 1.2 **Express Warranties.** Nothing herein shall be construed to prevent any express warranties with respect to the goods. However an express warranty with respect to the goods shall be enforceable only if it is in writing.
- 1.3 **Statute of Limitation.** The customer must commence any warranty or other claim, based upon the goods sold to it by ClimbingForKids.com, a division of Nicros, Inc., within one year from the time the breach occurs. Any claim commenced after that time shall be unenforceable.
- 1.4 **Modifications.** The provision of §1.1, §1.2, and §1.3 above may subsequently be modified by the parties. However, any such modification will be effective only if it is in writing and specifically refers to and states that it supersedes the applicable provision hereof.

CLAIMS. All claims by the customer against ClimbingForKids.com, a division of Nicros, Inc. with respect to goods sold, and all claims by ClimbingForKids.com, a division of Nicros, Inc. against the customer with respect to the Open Account, shall be governed by the following:

- 2.1 **Account Stated.** Upon receipt of any Open Account statement from ClimbingForKids.com, a division of Nicros, Inc., the Customer shall notify ClimbingForKids.com, a division of Nicros, Inc. in writing of any inaccuracies contained therein. If the Customer fails to do so within thirty (30) days, then the amount of that Open Account statement shall forever be considered to be an account stated. Any suit commenced by ClimbingForKids.com, a division of Nicros, Inc., on such an account shall be treated in the same manner as a suit based upon a promissory note.
- 2.2 **Account Claims.** If the customer fails to pay the Open Account when it is due, ClimbingForKids.com, a division of Nicros, Inc., may sue the Customer. In such an event, ClimbingForKids.com, a division of Nicros, Inc., shall recover any and all collection costs it incurs (including, but not limited to, reasonable attorney fees).
- 2.3 **Defective Goods.** Except as otherwise provided in §1 above and §2.4 below, NOTHING CONTAINED HEREIN SHALL PREVENT THE CUSTOMER FROM SUING NICROS FOR ALLEGED DEFECTS IN THE GOODS, and the Customer may assert any such defective product claim against ClimbingForKids.com, a division of Nicros, Inc., in any proceeding involving an Open Account claim.
- 2.4 **Claims are Independent.** If ClimbingForKids.com, a division of Nicros, Inc., commences suit against the Customer on the Open Account, the parties agree that judgement on that claim may be entered immediately (not withstanding any procedural rule to the contrary). Under no circumstances shall this be deemed to prevent the Customer from maintaining a claim against ClimbingForKids.com, a division of Nicros, Inc., based upon defective goods. However, any such claim shall be totally independent from any Open Account claim by ClimbingForKids.com, a division of Nicros, Inc., and shall not prevent ClimbingForKids.com, a division of Nicros, Inc., from obtaining immediate entry of judgement on its Open Account Claim.
- 2.5 **Consequential Damages.** Under no circumstances may ClimbingForKids.com, a division of Nicros, Inc., recover lost profits or other consequential damages on any Open Account Claim. Under no circumstances may the Customer recover lost profits or other consequential damages on any defective product claim.

JURISDICTION AND VENUE. The following provisions apply with respect to any action arising out of or based upon the Agreement:

- 3.1 **Minnesota Courts.** The Customer hereby consents to the personal jurisdiction over it of any federal and state district court located within the State of Minnesota. The Customer further consents to the venue of any such court located within fifty (50) miles of ClimbingForKids.com, a division of Nicros, Inc.,' principal business office.

MISCELLANEOUS. The Agreement shall be construed and interpreted in accordance with the provisions set forth below:

- 4.1 **Amendments and Waivers.** No amendment or waiver of any provision of the Agreement shall be of any force or effect unless it is in writing and executed by both parties. Any such waiver given on one occasion does not imply that such a waiver has been, or must be, given on any subsequent occasion.
- 4.2 **Prohibition on Assignments.** The Customer cannot assign its rights hereunder to any person without the prior written consent of Nicros. Any such attempted assignment, without ClimbingForKids.com, a division of Nicros, Inc.,' prior written consent, is void.
- 4.3 **Default Bond.** If suit is commenced, and the plaintiff becomes entitled to a default judgement, then – despite any rule to the contrary – it is hereby agreed that a default bond shall be (1) REQUIRED if legal process was only served by publication, and (2) WAIVED if legal process was personally served in-state or personally served out-of-state.
- 4.4 **Choice of Law.** The Agreement shall be interpreted in accordance with the laws of the State of Minnesota.