

CREDIT ACCOUNT APPLICATION FORM AND TERMS & CONDITIONS OF TRADE AGREEMENT

Please complete this application form in full, and email to admin@carterheavyhaulage.com.au

1. Applicant's Details

Type of business (please tick one):

Sole Trade Partnership Company Trust Local Govt/Govt Authority International applicant

Company name, Trustee name or names of Partners/Sole trader:

Trading as:

ACN/ABN:

Registration Date:

Street address:

Postal address:

Telephone:

Fax:

Website:

Accounts Contact Person:

Email Address:

2. Type of Business

Type of business or main income-producing activity:

Date commenced trading:

No of employees:

Are the premises on which the activity is carried out: Owned Rented Mortgaged

3. Trade References

Reference 1

Name:

Address:

Telephone:

Fax:

Email:

Reference 2

Name:

Address:

Telephone:

Fax:

Email:

4. Applicant's Credit Details

Bank:

BSB

Account number:

Credit requested (monthly): \$

Note: The amount requested is not the Credit Limit. In accordance with cl.2.3 of the Terms and Conditions the approved Credit Limit will be confirmed with the Applicant in writing.

Payment terms requested: 7 days EOM 14 days EOM 30 days EOM 45 days EOM

Note: Please select your preferred number of days after end of month (in which the invoice was issued) that payment is due. The option selected is not the agreed Payment Terms. The approved Credit Limit will be confirmed with the Applicant in writing. 1

5. Details of Sole Trader / Partners / Directors / Trustees

Title: Name:

Residential Address:

Are the above premises (please tick one): Owned Rented Mortgaged

Telephone: (Home) (Mobile): Email:

Driver’s licence number: DOB:

Additional Partners/Directors/Trustees:

Title: Name:

Residential Address:

Is the above premises (please tick one): Owned Rented Mortgaged

Telephone: (Home) (Mobile): Email:

Driver’s licence number: DOB:

Have any of the Directors/Partners/Trustees previously been declared bankrupt, or have they been a Director/Partner/Trustee of a company which has been liquidated or placed into administration?

Yes No (if **YES**, please provide the details below):

6. Terms and Conditions of Trade

Carter Heavy Haulage & Transport Pty Ltd ACN 162 049 738 (**CHH**) Terms and Conditions of Trade (**The Conditions**) are contained in section 9 of this application form. The Conditions are incorporated into each and every contract (**Contract**) for the supply of goods and/or services made between CHH and the Applicant after the date (**Acceptance Date**) that CHH agrees to provide credit to the Applicant.

By signing this application in the space provided in section 7 of this application form, the Applicant:

- a) expressly acknowledges having received notice of the Conditions;
- b) expressly agrees that the Conditions are incorporated into each and every Contract for the supply of goods and/or services made between CHH and the Applicant after the Acceptance Date; and
- c) expressly agrees that if CHH varies the Conditions from time to time after the Acceptance Date and provides reasonable notice to the Applicant of the variation, the Conditions as varied are incorporated into each and every contract for the supply of goods and/or services made between CHH and the Applicant after the date of such notice.

7. Signature of Applicant

On behalf of the entity nominated in this Application as the Applicant, I/we being duly authorised have read and agree to accept the Conditions for the operation, establishment and use of an account and hereby apply for the establishment of an account. I/we warrant that the information provided by me/us in this application is true and complete.

Signature of Authorised Signatory

Signature of Authorised Signatory

Name & Title of Authorised Signatory

Name & Title of Authorised Signatory

Date of Signature

Date of Signature

8. Guarantee, Indemnity and Charge

In consideration of CHH agreeing to supply or continuing to supply goods and/or services on credit to the Applicant and forbearing to sue the Applicant (except where provided for by any statutory provision) for any payment currently due to CHH, each guarantor named below (the “**Guarantor**”) unconditionally and irrevocably guarantees on demand to CHH the due and punctual payment of all debts and monetary liabilities, including without limitation, costs and expenses which are, or which may become, payable by the Applicant to CHH or any related body corporate on any account and in any capacity (the “**Guaranteed Moneys**”) and, as a separate and independent obligation, agrees to indemnify and keep CHH and any related body corporate indemnified from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by CHH or such related body corporate in relation to the non payment or non recovery of the Guaranteed Moneys or as a result of any breach by the Applicant of the Conditions. The Guarantor hereby agrees with CHH that:

1. This guarantee, indemnity & charge (the ‘**Guarantee**’) shall be a continuing obligation of the Guarantor and that the Guarantor’s obligations under this Guarantee are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:
 - (a) any other guarantee or any security or instrument which CHH or any related body corporate may hold in respect of any Guaranteed Moneys or any judgement obtained by CHH or any related body corporate, or any release, discharge, surrender or modification of, or dealing with, any such guarantee, security, instrument or judgement;
 - (b) any arrangement with, or release of, the Applicant or any other guarantor or person by CHH or any related body corporate or by operation of law;
 - (c) the fact that any of the Guaranteed Moneys are irrecoverable for any reason;
 - (d) any change in the membership of or termination of any partnership or firm of which the Applicant or Guarantor is a member or the death, liquidation or bankruptcy of the Applicant or the assent of CHH or any related body corporate to any composition, arrangement or scheme in respect of the Applicant or the acceptance by CHH or any related body corporate of any dividend or sum of money thereunder;
 - (e) the failure of any other person named as a party to execute this Guarantee;
 - (f) any variation of the terms upon which the goods and/or services are supplied to, or paid for by, the Applicant;
 - (g) any claim the Applicant may have against CHH or any related body corporate;
 - (h) any act or omission by CHH or any related body corporate which may result in prejudice to the Guarantor;
 - (i) an increase in the amount of Guaranteed Moneys;
 - (j) the fact that any credit was provided by CHH or any related body corporate before this Guarantee was signed;
 - (k) payment to CHH or any related body corporate by any person which is later avoided by the application of any statutory provision;
 - (l) the death, liquidation or bankruptcy of the Applicant or the Guarantor;
 - (m) the granting of any time, waiver, credit, any indulgence, concession to, composition with, release or discharge by novation of any person whatsoever by CHH or any related body corporate;
 - (n) the assignment, novation, transfer or assumption of, or other dealing with, any rights or obligations under this Guarantee or any other document or agreement;
 - (o) any other act, omission, matter or thing whatsoever.
2. Until CHH has received all of the Guaranteed Moneys, the Guarantor agrees:
 - (a) in the event of any bankruptcy or other administration of the Applicant’s estate or any winding up or scheme of arrangement of the Applicant, that the Guarantor will not without the prior consent of CHH lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Applicant and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for CHH;
 - (b) if requested by CHH, to lodge a proof of debt or similar claim in any such administration and enforce any such security and to execute all such documents and do all such things as CHH may require to enable CHH to have and receive the benefit of or arising from any such proof, claim or security;
 - (c) not to attempt or purport to be subrogated to CHH; and
 - (d) the Guarantor’s liability under this Guarantee shall be that of principal debtor.
3. The Guarantor irrevocably appoints CHH as the Guarantor’s attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do, including without limitation the following:
 - (a) to make, sign, execute, seal and deliver any document; and
 - (b) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.

4. The Guarantor further agrees that:
 - (a) the Guarantor has signed this Guarantee voluntarily;
 - (b) before entering this Guarantee, the Guarantor was advised by CHH to consult and receive advice as to the purport, effect and consequences of, and obligations created by, this Guarantee from a legal adviser independent of CHH;
 - (c) the Guarantor understands the nature and effect of this Guarantee - in particular that the Guarantor has agreed to guarantee all amounts presently owed by the Applicant to CHH and any related body corporate and all amounts that the Applicant may in the future owe to CHH and any related body corporate and has also agreed, as a separate and independent obligation, to provide an indemnity to CHH and any related body corporate if any of the Guaranteed Moneys is not paid to, or recovered by, CHH; and
 - (d) it has not entered into this Guarantee in reliance on any representation, warranty, promise or statement of CHH or any person on behalf of CHH or any related body corporate.
5. The Guarantor agrees that a certificate issued by CHH stating any moneys owed by the Applicant or Guarantor to CHH or any related body corporate or under this Guarantee shall be conclusive evidence of such amounts owing by the Applicant and Guarantor.
6. CHH may give the Applicant more credit than the Applicant has asked for in this application. CHH is not required to inform the Guarantor of the amount of credit given to the Applicant at any time.
7. No payment shall operate to discharge or reduce a liability of the Guarantor if such payment is or becomes voidable under any law relating to bankruptcy or the winding up of companies, and no discharge or release consequent upon such payment shall discharge the liability of the Guarantor under this Guarantee.
8. Where any provision of or application of any provision of this Guarantee is rendered ineffective by operation of law in any jurisdiction that shall not affect the validity, legality, enforceability or effectiveness of the remaining provisions or of that provision in any jurisdiction other than the jurisdiction where the provision is rendered ineffective.
9. The guarantee and indemnity contained in this Guarantee are separate and independent obligations of the Guarantor and neither limits the generality of the other.
10. To secure payment of the Guaranteed Moneys the Guarantor hereby charges with due payment of the Guaranteed Moneys all of the Guarantor's present and future interests in real property and the Guarantor consents to CHH lodging a caveat or caveats to note such interests. Upon demand by CHH the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to CHH to further secure payment of the Guaranteed Moneys. The Guarantor hereby and by way of security irrevocably appoints every officer and legal practitioner of CHH jointly and each of them severally as the Guarantor's lawful attorney ('**Attorney**') with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form determined in the absolute discretion of the Attorney over any real property of the Guarantor to secure the Guaranteed Moneys, if the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, and to procure the registration of such mortgage or other security.
11. All payments which the Guarantor is required to make under this Guarantee must be made without any set-off, counterclaim, condition or deduction and are payable on demand by CHH.
12. Any demand or notice may be served on the Guarantor by delivering it to the Guarantor personally or by sending it by post to the Guarantor's last address.
13. The Guarantor must fully indemnify CHH for all expenses and legal costs that CHH incurs in enforcing this Guarantee.
14. The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this Guarantee. The Guarantor agrees to pay the GST inclusive amount of any taxable supply made under or in connection with this Guarantee.
15. In this Guarantee, 'Guarantor' means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns, and 'Agreement' means all current and future agreements or arrangements.
16. In this Guarantee 'related body corporate' has the meaning in the Corporations Act.
17. In this Guarantee, the following rules of interpretation apply unless the context otherwise requires:
 - (a) words denoting the singular number include the plural (and vice versa);
 - (b) words denoting natural persons include bodies corporate and unincorporate and their permitted assigns (and vice versa); and
 - (c) references to any party to this Guarantee or any other agreement or instrument include the party's successors
 - (d) and permitted assigns.
18. This Guarantee is governed by the laws of New South Wales and the Commonwealth of Australia and the Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

Executed as an agreement

SIGNATURE OF GUARANTORS

All company directors / trustees / partners must give this guarantee, indemnity and charge.

Signatory 1

**THIS GUARANTEE MUST BE WITNESSED BY AN
INDEPENDENT THIRD PARTY**

Signature:

Witness signature:

Full Name of Guarantor:

Full Name of Witness:

Residential Address:

Address:

.....

.....

Position:

Occupation of Witness:

Date:

Date:

Signatory 2

**THIS GUARANTEE MUST BE WITNESSED BY AN
INDEPENDENT THIRD PARTY**

Signature:

Witness signature:

Full Name of Guarantor:

Full Name of Witness:

Residential Address:

Address:

.....

.....

Position:

Occupation of Witness:

Date:

Date:

9. Terms and Conditions

1 Definitions

- 1.1 'Company' means Carter Heavy Haulage & Transport Pty Ltd ACN 162 049 738, its related bodies corporate and its employees, agents, directors and independent contractors.
- 1.2 'Applicant' means the party applying for a Credit Account.
- 1.3 'Application' means the application form above and the following terms and conditions.
- 1.4 'Account' means the account which is the subject of this Application.
- 1.5 'Services' means any and all services provided by the Company to the Applicant or its agents or assigns.
- 1.6 'Goods' means any and all goods provided by the Company to the Applicant or its agents or assigns.
- 1.7 'Loss' means damage, loss, cost, expense or liability (whether actual or contingent).

2 General

- 2.1 For the purposes of considering the Application and, upon approval of this Application, at any time during the existence and operation of the Account, the Applicant authorises the Company to make such enquiries as the Company may require to be satisfied as to the creditworthiness of the Applicant. The Applicant agrees to provide signed written authorities addressed to the Applicant's banker, or other credit providers, as the Company requires from time to time.
- 2.2 The Company reserves the right to require the Applicant to spend a minimum dollar amount per year to obtain goods or services on credit (charged to the Account).
- 2.3 The Company shall specify in writing to the Applicant the maximum (GST-inclusive) amount that may be charged to the account over a particular period ('Credit Limit'). The Applicant's Credit Limit is subject to review at any time by the Company. The Company may, on request in writing by the Applicant, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any one time must not exceed the Credit Limit. The Company is not responsible for any Loss whatsoever or howsoever caused arising from the refusal of the Company to supply the Applicant with any Goods or Services on credit because the Credit Limit has been exceeded. The Applicant agrees to immediately pay the amounts charged to the Account for any Goods or Services supplied by the Company in excess of the Credit Limit, whether or not demand for payment has been made by the Company.
- 2.4 The Applicant is responsible for and agrees to indemnify the Company against any unauthorised use of the Account. The Applicant must notify the Company in writing of any unauthorised transactions on the Account immediately upon the Applicant becoming aware of them.

3 Terms of Payment

- 3.1 The Applicant agrees to pay to the Company, no later than the number of days from the end of the month in which the tax invoice was issued, the amounts set out therein, according to the agreed Payment Terms. The Company shall specify in writing to the Applicant the approved Payment Terms for agreement.
- 3.2 Payment of the amount referred to in clause 3.1 shall be in Australian Dollars (AUD).
- 3.3 Tax invoices shall be posted or emailed to the Applicant at the addresses specified by the Applicant for that purpose in the Application. This shall be sufficient notice of the amount due under the Account.
- 3.4 Any complaint made by the Applicant that a transaction recorded on the Applicant's tax invoice is incorrect must be advised to the Company in writing within seven (7) days of the issue of the tax invoice. If this does not occur, the transactions recorded in the tax invoice shall be taken to be correct. If part of the amount in the tax invoice is in dispute, the Applicant agrees to pay the undisputed amount within the time referred to in clause 3.1.
- 3.5 Where the Applicant has defaulted in its payment obligations under these Terms and Conditions, any amounts owing by the Applicant to the Company in connection with the Account may be deducted by the Company from any fee payable by the Company to the Applicant under any other contract.
- 3.6 Clause 3.5 does not preclude or otherwise limit the rights of the Company to pursue legal recourse in the event of default by the Applicant.

4 Quotations, Orders and Contract

- 4.1 A written quotation issued by the Company to the Applicant is an offer of Goods and/or Services for purchase by the Applicant and will not create any contract for the supply of Goods and/or Services between the Company and the Applicant until the quotation is accepted.
- 4.2 A contract for the supply of Goods and/or Services is made when the Applicant communicates to the Company its acceptance of a written quotation.
- 4.3 The Company may withdraw, revoke or vary a written quotation at any time prior to the Applicant accepting the quotation.
- 4.4 A written quotation expires on the date specified as the expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 4.5 A contract made pursuant to clause 4.2 shall be executed on the terms and conditions expressed in any document in which the contract is contained. To the extent of any inconsistency between the terms and conditions of that contract and any of these Terms and Conditions, the terms and conditions of the contract shall prevail. Where no inconsistency arises, the provisions of these Terms and Conditions shall be taken to apply in addition to any terms and conditions expressed in a contract made pursuant to clause 4.2.
- 4.6 The provisions of these Terms and Conditions shall prevail over any terms and conditions of trade of the Applicant whether or not any inconsistency arises.
- 4.7 The Company shall have the right to cancel any contract made pursuant to clause 4.2 including the cancellation of the supply of Goods and/or Services in respect of the same, at any time before the supply of the Goods and/or Services by giving written notice to the Applicant. On giving such notice, the Company shall repay to the Applicant any monies paid in respect of the contract. The Company shall not be liable for any Loss whatsoever arising from such cancellation.
- 4.8 In the event that the Applicant cancels any contract for the supply of Goods and/or Services, the Applicant shall be liable for a cancellation fee of twenty-five percent (25%) of the total agreed amount. This amount shall be payable in addition to the agreed amount.

5 Price

- 5.1 In respect of contracts for the supply of Goods and/or Services made pursuant to clause 4.2, the price shall be at the Company's sole discretion and shall be either:
- 5.1.1 As indicated on invoices provided by the Company in respect of the supply of Goods and/or Services;
- 5.1.2 The Company's current price as at the date of supply according to the Company's current prices; or
- 5.1.3 The Company's quoted price provided that the Applicant accepts the Company's written quotation within thirty (30) days of the date on the written quotation.
- 5.2 Where in the period between acceptance of a written quotation and the supply of Goods and/or Services, the Company incurs an increase in the cost of supplying the Goods and/or Services, the Company reserves the right to increase the quoted price of those Goods and/or Services at any time prior to supply ('Price Escalation'). The Applicant accepts any such Price Escalation
- 5.3 The Company reserves the right to vary the price in the event of a variation to the written quotation.
- 5.4 The Company reserves the right to seek a non-refundable deposit from the Applicant, the terms of which to be stated in any written quotation issued by the Company to the Applicant.

- 5.5 All prices and fees will be charged at a two (2) hour minimum for week days and a four (4) hour minimum for weekends and public holidays, excluding Shuttle Buggies where a four (4) hour minimum applies at all times. Additional costs and charges shall apply for any specific oversized items outside of normal curfew hours and where a pilot vehicle is required.

6 Default and Consequences of Default

- 6.1 In the event that the Applicant fails to make any payment when due then, without prejudice to the application of any other provision contained in these Terms and Conditions or to any other remedy provided for by these Terms or Conditions or otherwise, interest shall accrue on the amount of the overdue payment at the rate of fifteen percent (15%) per annum calculated from the date payment was due.
- 6.2 In such an event, the Company shall have the right to withhold the supply of Goods and/or Services and to cancel all outstanding orders and retain any payments already made.
- 6.3 No cheque will be treated as payment if dishonoured despite the issue of a receipt. The Applicant will be responsible for any charge or fee issued to the Company for any cheques not met on presentation.
- 6.4 If the Applicant fails to make any payment when due, the Applicant shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs and/or collection agency costs.
- 6.5 Without prejudice to any other remedies the Company may have, if at any time the Applicant is in breach of any obligation (including those related to payment), the Company may suspend any of its obligations under these Terms and Conditions. The Company will not be liable to the Applicant for any Loss the Applicant

- suffers because the Company has exercised its rights under this clause.
- 6.6 Without prejudice to any other remedies which the Company may have at law or in equity, the Company shall be entitled to cancel all or any part of any order of the Applicant which remains unfulfilled and all amounts owing to the Company shall, whether or not due and payable, become immediately payable in the event that:
- 6.6.1 Any money payable to the Company becomes overdue, or in the Company's opinion the Applicant will be unable to meet its payments as they fall due; or
- 6.6.2 The Applicant becomes insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 6.6.3 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Applicant or any asset of the Applicant.
- 7 Limitation of Liability**
- 7.1 To the extent permitted by the law the liability of the Company whether in contract or in tort, in respect of all claims for loss, damage or injury arising from a breach of any of the Company's obligations arising under the contract, from any negligence of any act, matter or thing done or permitted to be done by the Company, its servants, agents and contractors shall not in the aggregate exceed the price stated in the written quotation issued by the Company to the Applicant.
- 7.2 Where so permitted, under no circumstances will the Company be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Applicant or its servants, agents and contractors and the Applicant acknowledges this express limit of liability and agrees to limit any claim accordingly.
- 7.3 Except as provided herein, all express and implied warranties and guarantees in respect of the supply of any Goods and/or Services are hereby expressly excluded and the Company shall not be liable for loss or damage (including consequential loss or damage) of any kind arising in connection with the supply of any Goods and/or Services.
- 8 The Company's Warranty**
- 8.1 The Customer shall, within seven (7) days of the supply of any Goods and/or Services (time being of the essence), notify the Company of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation. The Customer shall afford the Company an opportunity to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification. If the Customer fails to give notice in accordance with this clause, the Goods or Services shall be presumed to be free from any defect, error, omission, shortage in quantity, damage or failure to comply.
- 8.2 Goods will not be accepted for return other than in accordance with the provisions of this clause.
- 8.3 The Company warrants that:-
- 8.3.1 No conflict of interest exists which may prejudice the performance of its obligations under this Application and agrees to declare any conflict should it arise in the future; and
- 8.3.2 The Company has obtained and will continue to maintain all permits and licences necessary for the lawful performance of the Services and agrees to provide evidence of this to the applicant's satisfaction where requested in accordance with this Application.
- 9 Indemnity**
- 9.1 The Applicant shall at all times indemnify and hold harmless the Company, its employees and agents from and against any Loss including, but not limited to:
- 9.1.1 Legal costs and expenses on a full indemnity basis;
- 9.1.2 Loss (including consequential loss) in relation to property;
- 9.1.3 Loss in respect of personal injury, disease, illness or death;
- 9.1.4 Economic loss; and
- 9.1.5 Loss in relation to the environment;
- caused by a breach by the Applicant of these Terms and Conditions and any contract made thereunder, or any wilful, unlawful or negligent act or omission by the Applicant. In these circumstances, the Company and/or its employees or agents shall not be held responsible for any Loss suffered by the Applicant, disruption to normal business operation or incorrect information due to any defect in workmanship or any other reason in relation to the supply of Goods and/or Services by the Company.
- 10 Rights in Relation to Goods**
- 10.1 The Applicant and the Company agree that:
- 10.1.1 Property and ownership (including legal and equitable title in any Goods sold by the Company to the Applicant remains with the Company until the Applicant meets all of its obligations pursuant to the Terms and Conditions, including but not limited to payment in full of the purchase price of the Goods and all other amounts owing to the Company by the Applicant;
- 10.1.2 Risk in the Goods shall pass to the Applicant at the time of delivery. The Applicant shall insure (and keep insured) the Goods on the following conditions until such time as property and ownership (including legal and equitable title) pass to the Applicant:
- 10.1.2.1 The Goods shall be insured for their full insurable or replacement value (whichever is higher); and
- 10.1.2.2 The Goods shall be insured by an insurer licensed or authorized to conduct the business of insurance in the place where the Goods will be stored.
- 10.1.3 If the Applicant fails to pay for the Goods within the period of credit (if any) extended by the Company to the Applicant:
- 10.1.3.1 The Applicant shall deliver the Goods to the Company, where demanded by the Company or its Agent; or
- 10.1.3.2 The Company may recover possession of the Goods by any necessary means at any site owned, possessed or controlled by the Applicant;
- 10.1.3.3 The Applicant agrees that the Company has an irrevocable license to exercise its rights under this clause;
- 10.1.3.4 The Applicant shall be liable for all costs associated with the exercise of the Company's rights under this clause, and this liability shall be payable on demand.
- 10.2 The Company and the Applicant agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Applicant:
- 10.2.1 The Applicant will not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 10.2.2 The Applicant will not allow any person to have or acquire any security interest in the Goods;
- 10.2.3 The Applicant will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorized by the Company;
- 10.2.4 The Applicant must not remove, deface or obliterate any identifying place, mark or number on any of the Goods;
- 10.2.5 Where the Applicant is in actual or constructive possession of the Goods:
- 10.2.5.1 The Applicant shall hold the Goods as fiduciary bailee and agent for the seller;
- 10.2.5.2 After giving 48 hours notice to the Applicant, the Company shall be entitled to enter upon the Applicant's premises between 9am and 5pm to inspect the Goods;
- 10.2.5.3 The Applicant will not deliver the Goods, or any document of title to the Goods, to any person except as directed by the Company;
- 10.2.5.4 The Applicant shall store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Applicant by the Company; and
- 10.2.5.5 The proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Applicant.
- 10.2.6 The Applicant acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Applicant and the Company shall be owners in common of the new product;
- 10.2.7 The Applicant has no right to claim any interest in the Goods to secure any liquidated debt or obligation the Company owes to the Applicant; and
- 10.2.8 The Applicant cannot claim any lien over the Goods.
- 11 The Applicant's Warranty**
- 11.1.1 The Applicant warrants, represents, guarantees and acknowledges to the Company that: All statements made and documents provided in connection with the Application and all representations that the Applicant has made or may make during the existence and operation of the Account to the Company are true and correct; and
- 11.1.2 The Account is required for the Applicant's business or commercial purposes and will not be used for personal, domestic or household purposes.

12 Termination

- 12.1 The Company may, at its sole discretion and without requiring any reason to do so, at any time, suspend or terminate the Applicant's Account on seven (7) days notice to the Applicant.
- 12.2 The Applicant acknowledges that the Company may suspend or terminate the Account immediately (with or without written notice) if:
- 12.2.1 The Company was induced by fraudulent misrepresentation on the Applicant's part to approve the Application; or
- 12.2.2 The amount charged to the Applicant's Account exceeds the Credit Limit at any time without the prior written approval of the Company; or
- 12.2.3 Any amount charged to the Account is due and unpaid (amounts disputed in accordance with clause 3.4 are not considered due until the dispute is rectified); or
- 12.2.4 In the opinion of the Company, any change of circumstances, including, without limitation, changes in the Applicant's constitution, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be charged to the Account, makes the continued operation of the Account undesirable or unsatisfactory; or
- 12.2.5 The Applicant:
- 12.2.5.1 Being a company, becomes, threaten or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
- 12.2.5.2 Being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- 12.2.5.3 The Applicant being a natural person, dies; or
- 12.2.6 The Applicant ceases or threatens to cease conducting business in the normal manner; or
- 12.2.7 The Applicant uses the Account for any non-commercial purposes including, without limitation, for personal, domestic or household purposes; or
- 12.2.8 The Applicant is otherwise in default of their obligations under these Terms and Conditions or any contract made thereunder.
- 12.3 If the Company suspends or terminates the Account under either of clauses 12.1 or 12.2, the balance of the Account and any amounts incurred but not then billed are immediately due and payable by the Applicant to the Company. The Applicant must pay to the Company any amounts reasonably incurred or expended by the Company in exercising its rights under these Terms and Conditions as a result of default by the Applicant or as a result of any circumstances referred to in clause 12.2.

13 Notice

- 13.1 Notice served pursuant to these Terms and Conditions or any contract made thereunder may be delivered by post, or by facsimile to:
- 13.1.1 In the case of the Applicant, at the postal or facsimile address provided in the Application or notified in writing by the Applicant to the Company in accordance with clause 13.2; or
- 13.1.2 In the case of the Company, at its office as listed at the top of this Application.
- 13.2 Notice is taken to be given:
- 13.2.1 In the case of ordinary post, the second business day after the day of posting; or
- 13.2.2 In the case of facsimile, the business day following the date of transmission provided that the sender has received confirmation receipt.

14 Assignment

- 14.1 The Applicant must not dispose of, assign, license, encumber or otherwise deal with its interest in or rights and obligations under these Terms and Conditions or any contract made hereunder without the express prior written consent of the Company which it may withhold in its absolute discretion.

15 Personal Property Securities Act 2009 (Cth) ('PPSA')

- 15.1 The Applicant hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods supplied by the Company to the Applicant to secure payment from time to time, including future advances. The Applicant agrees to grant to the Company a 'Purchase Money Security Interest'.
- 15.2 The Applicant acknowledges and agrees that by assenting to these Terms and Conditions the Applicant grants a security interest (by virtue of clause 10.1 and/or clause 16 of these Terms and Conditions) to the Company.
- 15.3 The Applicant undertakes to:
- 15.3.1 Sign any further documents and/or provide any further information (which information the Applicant warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement of financing change statement on the Personal Property Securities Register ('PPSR');
- 15.3.2 Not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior consent of the Company;
- 15.3.3 Pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;
- 15.3.4 Be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- 15.4 The Applicant waives any right it may have under section 115 of the PPSA upon enforcement.
- 15.5 Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Applicant waives any right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 15.6 The Applicant agrees that immediately on request by the Company the Applicant will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.

16 Security Interest

- 16.1 The Applicant gives the Company a security interest in all of the Applicant's present and after-acquired property in which Goods supplied or financed by the Company have been attached or incorporated.

17 General

- 17.1 Upon acceptance of these Terms and Conditions by the Applicant, these Terms and Conditions become binding and, subject to clause 17.8, can only be amended with the written consent of the Company.
- 17.2 The Applicant shall give to the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Applicant or any change to the Applicant's constitution, membership, control status, or the Applicant's name and/or any other change in the Applicant's details including, but not limited to, changes in the Applicant's address, facsimile number or business practice. The Applicant shall be liable for any loss incurred by the Company as a result of the Applicant's failure to comply with this clause.
- 17.3 If any provision of these Terms and Conditions becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.4 These Terms and Conditions and any contract to which they apply shall be governed by the laws of the New South Wales and the Commonwealth of Australia and the Applicant irrevocably submits to the non-exclusive jurisdiction of the that jurisdiction.
- 17.5 The Company shall be under no liability whatsoever to the Applicant for any indirect and/or consequential Loss and/or expense (including loss of profit) suffered by the Applicant arising out of a breach by the Company of these Terms and Conditions.
- 17.6 The Applicant shall not be entitled to set off against, or deduct from amount payable, any sums owed or claimed to be owned to the Applicant by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.7 The Company may license or sub-contract all or any part of its rights or obligations arising under these Terms and Conditions without the Applicant's consent.
- 17.8 The Applicant agrees that the Company may review these Terms and Conditions at any time. If, following such review, there is to be any change to these terms and conditions, then that change shall take effect from the date on which the Company notifies the Applicant of such change.
- 17.9 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.
- 17.10 The failure of the Company to enforce any provision of these Terms or Conditions or any provision of any contract made thereunder shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision