



APPLICATION FOR COMMERCIAL CREDIT

Credit Terms

1. Within 30 days of date of invoice.
2. The Personal Guarantee of all Directors/Principals is required for all applicants.
3. Full Terms and Conditions of Trade are attached and must be read in conjunction with this application.
4. All Directors/Principals and Guarantors execute the Privacy Statement.

APPLICANT/CUSTOMER

Type of Business: Sole Trader Partnership Company Trust Company

Trading name of business:

Name of company, trust, person(s)
or partnership operating business:

ACN: ABN:

Business street address:

Business postal address:

Telephone number: Fax number:

Contact person:

Email address:

Commencement of Business:

Name of bank: Branch:

BSB: Account number:

Contractor's licence number:

Name on Contractor's licence:

CREDIT LIMIT

Requested credit limit:



DETAILS OF DIRECTOR(S)/PROPRIETOR(S):

Director / Proprietor 1

Name: **Date of Birth:**

Driver's licence number & State of issue:

Current residential address:

Director / Proprietor 2

Name: **Date of Birth:**

Driver's licence number & State of issue:

Current residential address:

Director / Proprietor 3

Name: **Date of Birth:**

Driver's licence number & State of issue:

Current residential address:

Before ATEX Supplies Pty Ltd considers your Commercial Credit Application you are required to provide ATEX Supplies Pty Ltd with the following documents:

1. In respect of a company, please attach a copy of the **Certificate of Registration** issued by ASIC;
2. If using a business name, please attached a copy of the **Certificate of Registration of Business Name** issued by your Department of Fair Trading;
3. A legible photocopy of the **driver's licence of ALL** the signatories to the ATEX Supplies Pty Ltd Commercial Credit Application.

PAST CREDIT REFERENCES

1. **Name:**

Contact Name & Telephone number:

2. **Name:**

Contact Name & Telephone number:

3. **Name:**

Contact Name & Telephone number:



TERMS AND CONDITIONS OF SALE

1. CONTRACT

- 1.1. ATEX Supplies Pty Ltd (ABN 55 640 567 906) (the "Supplier" or "Seller") supplies Goods to the "Customer" subject to the following trading Terms and Conditions of Sale ("Terms").
- 1.2. These Terms apply whenever Goods are quoted for, sold, supplied or Delivered by the Supplier to the Customer.
- 1.3. Requesting or accepting a Quotation from, placing an Order with or accepting a supply or Delivery of Goods from the Supplier by a Customer constitutes acceptance by the Customer on these Terms.
- 1.4. To the extent that these Terms purports to be an acceptance of an Order, or offer, or amounts to a counteroffer, it shall be capable of acceptable only on the basis of the Terms and by acceptance or delivery of the Goods.
- 1.5. These Terms constitute a complete and exclusive statement of the general conditions of sale between the Supplier and the Customer.
- 1.6. The Supplier reserves the right to stop supply, withdraw credit facilities and/or close the Customer's account at any time without prior notice. Interest may be charged on overdue accounts.

2. DEFINITIONS

The following definitions apply to the Terms unless the context otherwise necessarily requires:

- (a) "Buyer" or "Customer" means the person or entity in the Application for Credit;
- (b) "Commercial Credit Account" means a trading account granted in writing by the Supplier to the Customer;
- (c) "Company" means ATEX Supplies Pty Ltd (ABN 55 640 567 906);
- (d) "Event of Default" has the meaning provided in clause 18;
- (e) "Event of Termination" means when the Customer is served with any originating process in any proceedings under the *Bankruptcy Act 1966* (Cth) or the winding-up provisions of the *Corporations Act 2001* (Cth) or similar or replacement legislation or has an Administrator, Provisional Liquidator, Receiver or Receiver and Manager appointed to it.
- (f) "Financing Statement" has the meaning given to it by the PPSA;
- (g) "Financing Change Statement" has the meaning given to it by the PPSA;
- (h) "Goods" means any goods supplied by the Supplier to the Customer pursuant to these Terms;
- (i) "Guarantor" means that person(s) or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis;
- (j) "Invoice" means the tax invoice for payment of Goods supplied or to be supplied by the Supplier to the Customer;
- (k) "Nominated Address" means the registered address of Customer or any other address nominated by Customer by written notice to the Supplier;
- (l) "Order" means any written or verbal request by the Customer to the Supplier for the supply of Goods;
- (m) "Price" shall mean the cost of the Goods as agreed between the Supplier and the Buyer subject to Clause 6 of the contract.
- (n) "PPSA" means the *Personal Property Securities Act 2009* (Cth);
- (o) "Secured Property" means any Goods over which a Security Interest is created pursuant to clause 19;
- (p) "Security Agreement" means the security agreement under the PPSA created between the Customer and the Supplier by these Terms;
- (q) "Security Interest" has the meaning given to it by the PPSA;
- (r) "Supplier" or "Seller" means ATEX Supplies Pty Ltd (ABN 55 640 567 906);
- (s) "Terms" means these Terms and Conditions and any variation thereto which has been expressly agreed, acknowledged or accepted by the Supplier.

3. INTERPRETATION

- 3.1. The following rules of interpretation shall apply to the Terms unless the context otherwise necessarily requires.
- 3.2. References in the Terms to the Supplier or the Customer includes references to their respective successors and permitted assigns.
- 3.3. Words and expressions, including defined terms in singular form include a reference to cognate words and expressions in plural form and vice versa and the words and expression importing a particular gender include respective references to cognate words and expressions importing each other gender.

- 3.4. Unless otherwise specifically indicated, a reference in the Terms to a clause, sub-clause, paragraph or sub-paragraph is a reference to a clause, sub-clause, paragraph or sub-paragraph of the Terms.

4. ACCEPTANCE

- 4.1. Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 4.2. Where more than one Buyer has entered into this agreement, the Buyer's shall be jointly and severally liable for all payments of the Price.
- 4.3. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions. Changes to these terms and conditions shall be made in writing on the mutual consent of both parties.
- 4.4. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised Statements.
- 4.5. The Buyer undertakes to give the Seller not less than Fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

5. GOODS

- 5.1. The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

6. PRICE, INVOICES & PAYMENT

- 6.1. At the Supplier's sole discretion, the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Buyer in respect of Goods supplied; or
 - (b) the Supplier's quoted Price which shall be binding upon the Supplier provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
- 6.2. Invoices will be issued by the Supplier on or after Goods have been delivered to the Customer's Nominated Address.
- 6.3. The Buyers payment will be due either thirty (30) days:
 - (a) following the date of the invoice; or
 - (b) after the end of the month (EOM) in which the goods were delivered, and this will be determined by the Seller and stated on the application. If the time for payment is not stated, then it will be due thirty (30) days after the EOM in which the goods were delivered.
- 6.4. Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Supplier.
- 6.5. The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

7. INTEREST

- 7.1. In the event payment of any amount invoiced pursuant to clause 7.1 is not received by Supplier within 30 days from the date of the invoice, ("the Outstanding Amount") interest will be payable by Customer on the Outstanding Amount at the rate of 18% per annum or any other rate determined by the Supplier from time to time and shall accrue until the outstanding amount and any applicable interest has been paid in full.

8. DELIVERY

- 8.1. Provided that an Event of Default is not subsisting the Supplier shall deliver the Goods to the Nominated Address within 1 month of the Supplier's receipt of an Order by Customer or at such other time as agreed between the Customer and the Supplier.
- 8.2. The Customer acknowledges and agrees that the delivery of Goods by the Supplier within a variation of $\pm 10\%$ of the quantity provided in the Order will constitute a good commercial delivery of an Order.
- 8.3. Where, due to absence of sufficient identification or for any other reason, the Nominated Address cannot be located, or for any other reason beyond the control of the Supplier, the Goods cannot be delivered, the Goods shall be returned to the Supplier and the costs and expenses incurred by the Supplier shall be added to the price of the Goods.
- 8.4. Where the Nominated Address is unattended by the Customer or any of its agents or servants, a certificate signed by the Supplier or any of the Supplier's agents or servants stating the time, date and place of delivery shall be prima facie evidence of the Goods' delivery.



9. DEFECTS/RETURNS

- 9.1. The Buyer shall inspect the goods on delivery and shall within seventy-two (72) hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 9.2. For Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the goods provided that:
- The Buyer has complied with the provisions of clauses 16.1 and 16.2;
 - The Goods are returned at the Buyers cost within seven (7) days of the delivery date by the Seller's approved carrier;
 - A return authority number (RGA) has been issued by the Seller;
 - The Seller will not be reliable for Goods which have not been stored or used in a proper manner; and
 - The Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
- 9.3. The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of **10% of the value of the returned Goods plus any freight.**

10. LIEN & STOPPAGE IN TRANSIT

- 10.1. Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
- a lien on the goods;
 - the right to retain them for the price while the Seller is in possession of them;
 - a right of stopping the goods in transit whether or nor delivery has been made or ownership has passed;
 - a right of resale; and
 - the forgoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

11. TITLE

- 11.1. It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:
- the Buyer has paid all amounts owing for the Goods; and
 - the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 11.2. It is further agreed that:
- Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the buyer to return the goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the goods shall cease.
 - If the Buyer fails to return the Goods to the Seller than the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the goods are situated and take possession of the goods, without being responsible for any damage thereby caused.
 - Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
 - The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - The Seller may require payment of the price of the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the payments due and the Price.
 - The Seller can issue proceedings to recover the Price of the Goods sold not withstanding that ownership of the Goods may not have passed to the Buyer.

- (g) Until such time the Buyer has the Seller's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Seller will be the owner of the product.

12. RISK/PROPERTY

- 12.1. Responsibility, risk of damage or loss of the Goods shall pass to the Customer immediately upon delivery to the Nominated Address.
- 12.2. Notwithstanding the passing of risk, property in the Goods shall not pass to the Customer until the price of Goods has been paid.
- 12.3. Upon ordering goods from the Supplier, the Customer shall be deemed to have appointed the Supplier or its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of a charge over the Goods with respect to the amounts owing to the Supplier by the Customer.
- 12.4. The Customer shall hold all Goods payment for which has not been received by Supplier separately from all other Goods and upon trust for the Supplier.
- 12.5. Clause 12.2 applies notwithstanding any extension of credit by the Supplier to the Customer.

13. CREDIT

- 13.1. The Supplier may in its discretion determine the credit limit whereby the Customer shall make payments when required to ensure the amount outstanding from time to time remains within the limit determined.
- 13.2. The Supplier may at any time without notice terminate any extension of credit to the Customer and require immediate payment of all or other amounts owing by the Customer to the Supplier.
- 13.3. The Customer shall not be entitled to retain any amount owing to the Supplier at any time notwithstanding any default or alleged default of the Supplier of the Terms.

14. CANCELLATIONS

- 14.1. The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods.
- 14.2. The Customer may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Supplier. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods.
- 14.3. Cancellation or variation of special item orders will not be accepted once production has commenced.
- 14.4. Either party shall not be liable to the other party for any loss or damage whatsoever arising from such cancellation.

15. SECURITY AND CHARGE

- 15.1. Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever, if the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable and other monetary obligations payable hereunder have been met.
- 15.2. Should the Seller elect to proceed in any manner in accordance with clause 15.1, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- 15.3. To give effect of the provisions of clauses 15.1 and 15.2 inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as Buyer's and/or Guarantor's true and lawful attorney to charge (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in the Seller's absolute discretion against the joint and/or several interest of the Buyer and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.



16. WARRANTIES AND EXCLUSION OF LIABILITY

- 16.1. The Terms are applicable to the Order and supply of all Goods and, so far as is permitted by law, no other terms, conditions, agreements, warranties, representations or understandings whatsoever, whether express or implied, shall bind either the Supplier or the Customer.
- 16.2. The Customer acknowledges and declares that the Customer has read the Terms and understand the same and that no warranty, assurance or representation has been made regarding the quality, fitness for use, suitability or merchantability of the Goods for any purpose whatsoever and that in all things the Customer has relied entirely on the Customer's own knowledge skill and judgement.
- 16.3. Where any Act of Parliament or any statutory modification or re-enactment thereof implies into the Terms any term, condition, warranty or representation, the liability of the Supplier for the breach of such term, condition, warranty or representation shall be limited at the option of the Supplier to any one or more of the following:
- the replacement of Goods or the supply of equivalent Goods; or
 - payment of the cost of replacing Goods or of acquiring equivalent Goods.

17. DEFAULT

- 17.1. The following events are an "Event of Default":
- Interest of overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate applicable applied by the Supreme Court of New South Wales compounding per calendar month and shall accrue at such a rate as well as before any judgement.
 - If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees' costs of collection.
 - If the Buyer's payment is dishonoured by their bank, then the Seller reserves the right to increase the amount of the Price by any charges for dishonours charged by the Sellers bankers.
- 17.2. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment). The Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its right under this clause.
- 17.3. In the event that:
- any money payable to the Seller becomes overdue, or in the seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors,
- the Seller shall be entitled all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; (ii) all amounts owing to the Seller shall, whether or not due for payment immediately become payable in addition to the interest payable under clause 17.1 hereof.

18. FORCE MAJEURE

The Supplier will be not liable to the Customer for damages for any delay in the delivery of the Goods and neither party shall be liable in damages to the other for any interruption in the supply of acceptance of Goods or for any other act or omission which but for this present clause might constitute breach of the Terms if such delays, failure to deliver or accepted delivery, act or omission are caused by force majeure or any cause beyond the control of whom, but for this clause, would be in breach of the Terms.

19. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- 19.1. The Customer acknowledges and agrees that these Terms and any Invoice issued under these Terms:
- constitute a security agreement for the purposes of the PPSA; and
 - create a Purchase Money Security Interest ("PMSI") in:
 - all Goods previously supplied by the Supplier to the Customer (if any);
 - all Goods that will be supplied in the future by the Supplier to the Customer; and
 - all proceeds of the sale of such goods.

- 19.2. The Customer undertakes to:

- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Customer may reasonably require to:
 - register a Financing Statement or Financing Change Statement in relation to a security interest on the Personal Property Securities Register ("PPSR");
 - register any other document required to be registered by the PPSA; and/or
 - correct a defect in a statement referred to in Clauses 19.2(a)(i) or 19.2(a)(ii);
 - accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative;
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSA established by the PPSA or releasing any goods charged;
 - not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
 - immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply and hereby consents to the execution, registration and perfection of each and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.
- 19.3. To the extent section 115(1) allows this, sections 95, 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply to any Security Interest created under these Terms and any Invoices issued under these Terms.
- 19.4. To the extent section 115(7) allows this, sections 127, 129(2), 132, 134(2), 135, 136(3), (4) and (5) and 137 of the PPSA will not apply to any Security Interest created under these Terms and any Invoices issued under these Terms.
- 19.5. To the extent the law, the Customer and each of the Guarantors waives its rights to receive any notice that is required by:
- any provision of the PPSA (including a notice of a verification statement; or
 - any other law before the Supplier or a receiver exercises a right, power or remedy; or
 - any time period that must otherwise lapse under any law before the Supplier or a receiver exercises a right power or remedy.
- 19.6. If a law which required a period to notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period that the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits the Supplier or any receiver from serving a notice under the PPSA or pursuant to any other law.
- 19.7. The Customer waives any right to receive any notice required to be provided under the PPSA (including under sections 144 and 157) in respect of any Security Interest unless the requirement to give the notice cannot be waived or excluded.
- 19.8. The Customer shall unconditionally ratify any actions taken by the Supplier under Clauses 19.1 to 19.8 of these Terms.
- 19.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 19.10. The Customer acknowledges that the Supplier has the right to register the Goods on the PPSR.
- 19.11. The Customer agrees to provide all relevant information to enable the Supplier to register the Goods on the PPSR and generally to maintain, obtain, register and enforce the security interests created pursuant to these terms and conditions.
- 19.12. The Customer hereby consents to the execution, registration and perfection of each and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.
- 19.13. Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The



Customer waives any right it has to authorise disclosure of the above information.

- 19.14. In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Customer, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Customer as a result of exercising its rights under this clause. If there is any inconsistency between the Supplier's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails
- 19.15. All costs and expenses arising as a result of actions taken by either party pursuant to this clause 16 will be for the account of the Customer. Within 7 days of a written request, the Customer must pay to the Supplier any costs or expenses incurred or to be incurred in connection with this clause 19
- 19.16. Pursuant to section 125(3) of the PPSA, the Supplier may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPSA, for as long as it sees fit in its absolute discretion.

20. FURTHER ASSURANCE

- 20.1. The Customer must, whenever requested by the Supplier and at the cost of the Customer do or cause to be done anything requested by the Supplier:
- (a) for more satisfactorily assuring or securing to the Supplier the Secured Property in a manner not inconsistent with any of the provisions of these Terms; or
 - (b) for assisting in the execution or exercise of any power, including, without limitation:
 - (c) executing any notice, consent, document or amendment to these Terms;
 - (d) delivering any title document; or
 - (e) doing any other thing that the Supplier considers necessary or desirable to:
 - (i) ensure that these Terms or any Security Interest arising under it is enforceable, effective and perfected, including if possible, by control;
 - (ii) register, protect, perfect, record, or better secure the position of the Supplier under these Terms; or
 - (iii) obtain or preserve the priority of the Security Interest constituted under these Terms.

21. BUYER'S DISCLAIMER

- 21.1. The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent buyer.

22. UPaid SUPPLIER'S RIGHTS

- 22.1. The seller has the right to Dispose of Goods in the event that:
- (a) the Seller retains possession or control of the Goods;
 - (b) payment of the Price is due to the Seller;
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

23. INDEMNITY

- 23.1. The Customer agrees to indemnify the Supplier against any claim, loss, liability or damage, costs, charges and expenses (including the Supplier's legal costs on a solicitor/ own client basis) suffered or incurred by the Supplier which arises directly or indirectly in relation to:
- (a) any breach of these Terms by the Customer;

- (b) any contravention of any law by the Customer; or
- (c) an action brought or threatened against the Supplier by any third party which arises directly or indirectly from your purchase or use of the Goods.

- 23.2. The Customer agrees to pay such expenses to the Supplier immediately on demand.

24. COMPETITION AND CONSUMER ACT 2010 (CTH) ("CCA") and FAIR TRADING ACT 1987 (NSW) ("FTA")

- 24.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the permitted by those acts where applicable.

25. PRIVACY ACT 1988 (CTH)

- 25.1. The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantors/s in relation to credit provided by the Seller.
- 25.2. The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the purpose:
- (a) to assess an application by Buyer;
 - (b) to notify other credit providers of a default by the Buyer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) to assess the credit worthiness of Buyer and/or Guarantors/s.
- 25.3. The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18k(1)(h) Privacy Act 1988).
- 25.4. The Buyer agrees that Personal Data may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Goods;
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods;
 - (c) analysing, verifying and /or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 25.5. The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the buyer.

26. CHANGE IN CONTROL

- 26.1. The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of control or ownership or office holding of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
- 26.2. In the event of a change, pursuant to clause 28.1 above, the Supplier may require that the Customer enter into a new Credit Account Application and may, at its sole discretion, require the Customer or any other reasonable person to sign a Guarantee and Indemnity.

27. DISPUTE RESOLUTION

- 27.1. If a dispute or difference between the parties arises in connection with the subject matter of this Contract, then either party shall by post or by hand provide written notice of the nature and details of the dispute.
- 27.2. Within 14 days of receipt of a notice in accordance with clauses 27.1 above, senior management representatives of each parties, with full authority to agree such resolution or resolution methods, shall confer to resolve the dispute or agree methods for resolving the dispute. All aspects of the conference, except for the fact of its occurrence, shall be privileged.
- 27.3. Nothing in this Clause 27 prevents a party seeking urgent interlocutory relief from a Court or requires that party to participate in informal resolution processes for longer than thirty (30) days after the dispute has arisen.

28. CONFIDENTIALITY

- 28.1. The Supplier and the Customer agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- (a) prior approval in writing has been obtained from the other party;



- (b) disclosure is required by law; or
 - (c) the information is in the public domain prior to the disclosure by the party.
- 28.2. The expression "any third party" does not include the financial or legal advisors of a party or a related body corporate of a party.

29. GENERAL PROVISIONS

- 29.1. If any of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2. All Goods supplied by the Seller are subjected to the laws of New South Wales and the Seller takes no responsibility for charges in the law which affect the Goods supplied.
- 29.3. The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of the terms and conditions.

- 29.4. In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 29.5. The Buyer shall not set off against the Price amounts due from the Seller.
- 29.6. The Seller may license or sub-contract all or any part of its rights and obligations with the Buyer's consent.
- 29.7. The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions that change will take effect from the date on which the seller notifies the Buyer of such change.
- 29.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

Signature

Witness Signature

Name

Witness Name

Position

Date

Date

Signature

Witness Signature

Name

Witness Name

Position

Date

Date

Signature

Witness Signature

Name

Witness Name

Position

Date

Date

FOR COMPLETION BY THE SUPPLIER

The Applicant's Customer's credit application is accepted. Signed for and on behalf of the Supplier.

Signature

Position

Name

Date

Pursuant to clause 6.3, payment will be due:

thirty (30) days from date of invoice.

thirty (30) days after the end of the month (EOM) in which the goods were delivered.



PRIVACY STATEMENT & CONSENT

To: **ATEX Supplies Pty Ltd (ABN 55 640 567 906)**

I/We understand that Part IIIA of the *Privacy Act 1988* (Cth) allows you to give a credit reporting agency certain personal information about me/us which I/we authorise you to do. I/We acknowledge and consent to the following:

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (Cth) ("the Act").
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier may collect personal information about the Customer and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. To enable the Supplier to assess the credit application or to review any existing credit, the Customer and Guarantors authorise and provide consent to the Supplier to obtain:
 - (a) from a credit reporting agency, a credit report containing personal information about the Customer and Guarantors in relation to credit provided by the Supplier;
 - (b) a report from a credit reporting agency containing personal information about the Customer and the Guarantors;
 - (c) a report containing information about the Customer's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier.
6. The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of the Customer.
7. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Act (as amended from time to time).
8. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 21M(1) of the Act).
9. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and the Supplier or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Supplier, its agents or distributor; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer.
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
10. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
11. The information given to the credit reporting agency may include:
 - (a) personal particulars of the Customer;
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Supplier is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by the Supplier has been paid or otherwise discharged.
12. Pursuant to the *Privacy Act 1988*, the Customer authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangement. The Customer acknowledges that the information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Act.
13. By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, Australia Privacy Principal 8.1 will not apply to the Supplier's dealing with the Customer's and/or Guarantor(s)' Information.
14. A full copy of the Supplier's privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
15. The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement(s).

Signature Position

Name Date

Signature Position

Name Date

Signature Position

Name Date



DEED OF GUARANTEE & INDEMNITY

To: ATEX Supplies Pty Ltd (ABN 55 640 567 906) (“Supplier”)

Name: Address:

.....

Name: Address:

.....

(Guarantor/s) in consideration of the Supplier, at the request of the Guarantor/s, entering into this agreement and supplying and continuing to supply Goods to:

Name of Applicant/Customer:

The Guarantor/s hereby unconditionally and irrevocably covenant and undertake and if more than one, jointly and severally, as follows:

Jurisdiction

- 1. This guarantee and indemnity will be construed according to and governed by the laws of New South Wales and the laws of the Commonwealth of Australia which are in force in New South Wales. The parties to this Guarantee and Indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant Federal Courts and Courts competent to hear appeals from those courts.

Consideration

- 2. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to the Supplier arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

- 3. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Customer and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
- 4. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 2 and 3 of this guarantee and indemnity.
- 5. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- 6. The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- 7. This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
- 8. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - (a) any other security taken by the Supplier from the Customer or from any other person;
 - (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
 - (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
 - (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

- 9. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until the Supplier has been paid in full.
- 10. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until the Supplier has been paid in full.

Insolvency of Customer

- 11. No sum of money which the Customer pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the Corporations Act 2001 (Cth), Bankruptcy Act 1966 (Cth) or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

Costs

- 12. The Supplier is at liberty from time to time to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
 - (a) the account of the Customer;



- (b) this guarantee and indemnity;
- (c) any other security in respect of the indebtedness of the Customer to the Supplier;
- (d) the preparation, completion and stamping of this deed; or
- (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;

- 13. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
- 14. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

- 15. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
- 16. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

- 17. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Security/charge

- 18. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 2 and 3.
- 19. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 2 and 3.
- 20. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
- 21. Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

- 22. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- 23. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Service of notices

- 24. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Guarantors or the Guarantors' authorised representative.

Privacy Act

- 25. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (Cth).

Acknowledgement

- 26. By signing this Guarantee and Indemnity, the Guarantor/s acknowledge that they have been advised to obtain independent legal advice before executing this Guarantee and Indemnity.

Dated:

Signed, sealed and delivered by the guarantor

Signature: Witness Signature:

Name: Witness Name:

Position:

Signed, sealed and delivered by the guarantor

Signature: Witness Signature:

Name: Witness Name:

Position: