

# Commercial Credit Application and Credit Terms

## 1. Instructions:

- (a) Complete all the relevant details in the application, sign and date the form.
- (b) An incomplete form will be returned for corrections.
- (c) If the Applicant is a company, the Deed of Guarantee and Indemnity form must be completed by all directors of the company. Guarantors are not to witness each other's signature and witnesses must be aged 18 years or older.
- (d) If you have any queries about what you are signing, particularly regarding the guarantee and indemnity, Civil Independence Industries Pty Ltd suggests you obtain independent commercial, financial and/or legal advice.
- (e) Please return completed forms to [accounts@civilind.com.au](mailto:accounts@civilind.com.au)

Applicant's Details		
Date of Application:		
Registered Trading Name:		
Date business commenced:		
Legal Structure:	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership
	<input type="checkbox"/> Pty Ltd Company	<input type="checkbox"/> Public Company
Company Name:		
ABN:		
Building Licence No:		
Business Address:		
Business Email:		
Postal Address for Accounts:		

Business Phone Number:		
Accounts Contact Details:	Name:	
	Email:	
	Phone:	

**If not providing a Purchase Order a Signed Acceptance of Quotation stating the Quote Number is required before the commencement of each project.**

*Circle if PO will be provided YES/NO*

**Four Trade References**

1.	Name:	
	Contact:	
	Phone:	
	Email:	
	Monthly Spend:	
2.	Name:	
	Contact:	
	Phone:	
	Email:	
	Monthly Spend:	
3.	Name:	
	Contact:	
	Phone:	
	Email:	
	Monthly Spend:	
4.	Name:	
	Contact:	
	Phone:	
	Email:	
	Monthly Spend:	

**Details and Signatures of All – Directors, Partners, Proprietors:**

Person 1	Full Name:			
	Home Address:			
	Date of Birth:			
	Drivers Licence:			
	Signature:		Date:	
Person 2	Full Name:			
	Home Address:			
	Date of Birth:			
	Drivers Licence:			
	Signature:		Date:	

# Credit Terms

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## 1. General

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- (a) These Credit Terms apply to any supply of Goods by Civil Independence Industries Pty Ltd ACN 621 542 881 (**Company**) to the applicant named in the attached application form (**Applicant**) on credit.
- (b) These Credit Terms are expressly incorporated into the Contract Documents and should be read in conjunction with the Contract Documents.
- (c) The Applicant acknowledges having received a copy of the Company's standard terms and conditions, and agrees that it has read, understood, accepts and agrees that the Company's standard terms and conditions and other Contract Documents will apply to the sale and supply of all Goods, and to be bound by them.

## 2. Provision of Credit

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- (a) The Applicant acknowledges that:
  - (i) by signing the Credit Application, the Applicant is applying for credit from the Company on these Credit Terms for an amount up to the Available Credit;
  - (ii) signing the Credit Application does not give the Applicant any entitlement to the extension of credit unless, in the Company's sole and absolute discretion, the Company has provided written notice to the Applicant;
    - (A) agreeing to extend credit to the Applicant; and
    - (B) informing the Applicant of the amount of the Available Credit; and
  - (iii) the extension of credit does not in any way derogate from, alter or limit the Applicant's obligations to make payments to the Company in accordance with the payment terms set out in the Contract Documents.
- (b) The extension of credit by the Company to the Applicant does not in any way prevent the Company being able to refuse to sell or supply Goods to the Applicant for any reason (including for any reason set out in the applicable Contract Documents).

- (c) Without limiting clause 1(b), the Applicant acknowledges that the Company may, in its sole and absolute discretion and without giving reasons, reduce the Available Credit to the level of the outstanding balance (or such other amount greater than the outstanding balance determined by the Company) and require that the sale and supply of any further Goods by the Company are subject to prepayment or cash on delivery or performance.
- (d) If the Applicant fails to comply with these Credit Terms or the applicable Contract Documents in all respects, or otherwise an Insolvency Event occurs in respect of the Applicant or any Guarantor, then all moneys outstanding under these Credit Terms or applicable Contract Documents, together with all interest accrued thereon, by the Applicant on any account to the Company, will immediately become due and payable.

## 3. Payment terms

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- (a) At the Company's sole discretion, a deposit may be required prior to any supply of Goods to the Applicant.
- (b) The terms of payment are strictly 30 days (or such other period as nominated by the Company) from the date of invoice and payment is due and payable on that date.
- (c) Interest on overdue amounts will accrue daily from the date when payment becomes due, until the date of payment at a rate of 1% per calendar month or part thereof and any such interest will compound monthly at that rate as well as before any judgement and the Applicant will be liable for, and expressly undertakes to pay, all such interest.
- (d) If the Company incurs legal and/or any other expenses, including legal costs on a solicitor and own client basis or any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Applicant, the Applicant will be liable to reimburse the Company for an amount equal to all such expenses paid.
- (e) Any payment made by or on behalf of an Applicant which is later avoided by the application of any statutory provision will be deemed not to discharge the Applicant's indebtedness and, in such an event, the

parties are to be restored to the rights which each respectively would have had if the payment had not been made.

- (f) The Applicant is liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonoured for whatever reason.

#### **4. Security**

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##### **4.1 PPSA**

- (a) For the purposes of this clause 4, any capitalised terms not defined herein shall have the meaning given to those terms in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- (b) The Applicant acknowledges that these terms constitute a Security Agreement which creates (or may create) a Security Interest in favour of the Company and in all Personal Property previously supplied by the Company to the Applicant (if any) and all after acquired Personal Property supplied to the Applicant by the Company (or for the Applicant's account) to secure the payment from time to time and at a time, including future advances. The Applicant agrees to grant to the Company a Purchase Money Security Interest.
- (c) The Applicant accepts, acknowledges and agrees that:
  - (i) the Company obtains a Security Interest in all Goods supplied by the Company to the Applicant on credit, including any commingled Goods;
  - (ii) the Company can, without notice to the Applicant, seek Registration of its Security Interest on the Personal Properties Security Register; and
  - (iii) pursuant to section 275(6) of the PPSA, the Applicant agrees the Company is not required to disclose to an interested person information pertaining to the Company's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- (d) The Applicant will:
  - (i) 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 perfection of its

Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;

- (ii) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Products, including any services, without the prior written consent of the Company;
  - (iii) give the Company not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including, but not limited to, changes in their address, facsimile number, email address, trading name or business practice);
  - (iv) indemnify the Company against any costs the Company incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs the Company may incur in the course of enforcing any of its rights under these Credit Terms, the PPSA or at law generally; and
  - (v) 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 reasonably require.
- (e) To the extent permitted by the PPSA the Applicant waives its rights to:
- (i) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
  - (ii) receive a statement that includes the information referred to in paragraph 132(3)(d) of the PPSA;
  - (iii) receive a statement under subsection 132(4) of the PPSA;
  - (iv) redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;
  - (v) reinstate the Security Agreement under section 143 of the PPSA; and
  - (vi) give a Notice of Objection under section 137 of the PPSA.

## 4.2 Guarantee and Indemnity

The Applicant warrants that the following persons (as applicable) will enter into a Guarantee and Indemnity with the Company in relation to the Applicant's obligations to the Company:

- (a) if the Applicant is a corporation, all of its directors;
- (b) if the Applicant is a trust, the trustee in its personal capacity; and
- (c) if the Applicant is a partnership, all of the partners.

## 5. Cancellation of credit

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- (a) The Company may withdraw the credit provided under these Credit Terms immediately by providing the Applicant with written notice if the Applicant defaults in any of its material obligations under these Credit Terms.
- (b) The Company may withdraw the credit provided under these Credit Terms without cause at any time by providing the Applicant with reasonable written notice.
- (c) Upon cancellation with or without notice, all liabilities owing by the Applicant become immediately due and payable to the Company (and in the case of a cancellation under clause 5(b), upon expiry of the notice period).

## 6. Warranties

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### 6.1 General

The Applicant warrants that:

- (a) the credit to be provided to the Applicant by the Company will be applied wholly or predominantly for the purpose of purchasing Goods from the Company;
- (b) if it is a corporate entity, it is validly existing under the laws of its place of incorporation;
- (c) it has full power to enter into and perform its obligations under these Credit Terms and to carry out the transactions contemplated by these Credit Terms;
- (d) it has taken all necessary action to authorise its entry into and performance of these Credit Terms and to carry out the transactions contemplated by these Credit Terms; and
- (e) its obligations under these Credit Terms are valid and binding and enforceable against it in accordance with their terms; and
- (f) it has read and understood these Credit Terms and has had the opportunity to obtain independent legal advice about its terms and effect.

## 6.2 Trust

If the Applicant is the trustee of a trust (whether disclosed to the Company or not), the Applicant warrants to the Company that:

- (a) the Applicant enters into these Credit Terms in both its capacity as trustee and in its personal capacity;
- (b) the Applicant has the right to be indemnified out of trust assets, and the trust deed does not limit the Applicant's indemnity against the trust;
- (c) the Applicant has the power under the trust deed to enter into, and perform its obligations under, these Credit Terms in its own right and in its capacity as trustee of the trust;
- (d) the trust has sufficient assets to meet the Applicant's liabilities and indemnities incurred by under these Credit Terms;
- (e) during the term of these Credit Terms and for a period of 7 years after expiry or termination, the assets of the trust will not be reduced to a level materially below that which is sufficient to meet the Applicant's liabilities and indemnities incurred by it under these Credit Terms;
- (f) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Company; and
- (g) the Applicant and each of its successors as trustee of the trust will be liable under these Credit Terms in its own right and as trustee of the trust, and nothing releases such party from any liability in its personal capacity.

## 7. Changes to Applicant

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The Applicant must notify the Company if any of the following events occur with respect to the Applicant as soon as reasonably practicable and in any event, within 30 days of such event occurring:

- (a) Change of Control;
- (b) if the Applicant is a corporation, a change in the board composition;
- (c) if the Applicant is a trustee, a change in the trustee; or
- (d) if the Applicant is a partnership, a change in the partner composition.

## 8. Costs

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- (a) The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Company relating to any default by the Applicant.
- (b) The Applicant will pay the Company's costs and disbursements incurred in pursuing any

recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Company irrespective of whether pursuit of the recovery action, claim or remedy is successful.

- (c) The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Company as follows:
- (i) firstly, in payment of any and all collection costs and legal costs in accordance with clause 3(d) or 8;
  - (ii) secondly, in payment of any interest incurred in accordance with clause 3(c);
  - (iii) thirdly, in payment of the outstanding invoices.

## 9. GST

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- (a) The Applicant must pay GST on any taxable supply made by the Company to the Applicant under these Credit Terms. This payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
- (b) If as a result of:
- (i) any legislation becoming applicable to the subject matter of these Credit Terms; or
  - (ii) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration,

the Company becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Company these additional amounts on demand.

## 10. Set off

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- (a) All payments required to be made by the Applicant under these Credit Terms will be made free of any set-off or counterclaim and without deduction or withholding.
- (b) Any amount due to the Company from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Company.

## 11. Credit checks

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- (a) The Company may use any information provided by the Applicant in connection with these Credit Terms to undertake credit

worthiness and other reference checks in respect of the Applicant.

- (b) The person signing these Credit Terms on behalf of the Applicant warrants that they have the authority to enter into clause 1 on behalf of the Applicant.

## 12. Definitions

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In these Credit Terms and Credit Application:

**Applicant** means the individuals completing the Credit Application including individual borrowers, business owners, company directors and officers, partners or trustees.

**Available Credit** means the amount of credit available to the Applicant as advised by the Company under clause 2(a) for the acquiring Goods from the Company minus the outstanding balance.

**Change of Control** means a change in the legal or beneficial ownership of more than 20% of the shares of any entity forming the Applicant, or a change in the effective or ultimate control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of any entity forming the Applicant.

**Credit Application** means the credit application form completed by the Applicant.

**Credit Terms** has the meaning given in clause 1(a).

**Contract Documents** means, as applicable, any agreements entered into between the Company and the Applicant from time to time whether signed by the Applicant or otherwise where the Applicant is deemed to have accepted the terms and conditions and includes the Company's general conditions of sale.

**Goods** means any Goods supplied by the Company to the Applicant.

**GST** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

**Guarantee and Indemnity** means the guarantee and indemnity document that the Company provides the Applicant.

**Guarantor** means each person giving a guarantee and indemnity by signing the Guarantee and Indemnity.

**Insolvency Event** means any of the following events concerning a party:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller is appointed to, or over, any of the property or undertaking of party;
- (b) if the party is unable to pay its debts when they become due and payable;
- (c) if the party ceases to carry on business; or

- (d) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

**PPSA** has the meaning given to that term in clause 4.1(a).

## **12.2 Interpretation**

- (a) These Credit Terms may only be amended by written agreement between all parties.
- (b) These Credit Terms supersede all previous agreements about its subject matter. This document embodies the entire agreement between the parties.

- (c) A clause or part of a clause of these Credit Terms that is illegal or unenforceable may be severed from these Credit Terms and the remaining clauses or parts of the clause of these Credit Terms continue in force.

- (d) A party must not assign or transfer, in whole or in part, any of its rights and obligations under these Credit Terms without the prior written consent of the other party (not to be unreasonably withheld or delayed).

- (e) The laws of Queensland, Australia govern these Credit Terms and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

## Guarantee and Indemnity

To: Civil Independence Industries Pty Ltd ACN 621 542 881 of 2 – 4 Murdock Street, Drayton, Queensland 4350 (**Company**)  
insert name of insert address

being a [director or trustee] of insert guarantor name (**Applicant**) who has applied for commercial credit from the Company.

In consideration of the Company entering into the commercial credit terms with the Applicant at the request of the Guarantor on or around the date of this Guarantee and Indemnity (**Commercial Credit Terms**), the Guarantor covenants with the Company as follows:

### 1. Guarantee and Indemnity

The Guarantor, as a principal obligor and not merely as surety, guarantees to the Company the due and punctual performance and observance of the obligations of the Applicant under the Commercial Credit Terms and indemnifies the Company against any damage, loss, cost or liability the Company incurs arising from or in connection with the Applicant's failure to meet any of its obligations under the Commercial Credit Terms including without limitation:

- (a) the prompt performance of all obligations of the Company under the Commercial Credit Terms; and
- (b) the prompt payment of all amounts for which the Company may become liable in respect of any breach of the Commercial Credit Terms.

### 2. Obligations

The obligation of the Guarantor under clause 1:

- (a) is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation however created or arising;
- (b) may be enforced against the Guarantor without the Company first being required to exhaust any remedy it may have against the Applicant or to enforce any security it may hold with respect to the Applicant's obligations;
- (c) is a continuing guarantee and indemnity for the whole of the Applicant's obligations and is irrevocable and remains in full force and effect until discharged; and
- (d) is not considered as wholly or partially discharged by the performance at any time of any of the Applicant's obligations or by any settlement of account or by any other matter or thing whatever and will apply to the present and future scope of the Applicant's obligations.

### 3. Liability unaffected

The liability of the Guarantor is absolute and is not affected by any act, omission, matter or thing which except for this clause might operate to release or otherwise exonerate the Guarantor from the Guarantor's guarantee or indemnity in whole or in part including:

- (a) the grant to the Applicant of any time, waiver or other indulgence or concession, or the discharge or release of any other security held by the Company in respect of the Applicant's obligations;
- (b) any transaction or arrangement between the parties;
- (c) the Company exercising or refraining from exercising any other security or any of the rights, powers or remedies conferred on it by law or by this Guarantee and Indemnity or

any other agreement with any person, or taking or failing to take any other security;

- (d) the variation (including a variation which increases the Applicant's obligations under the Commercial Credit Terms), extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part of the Commercial Credit Terms, or any security now or in the future held by the Company from the Applicant, the Guarantor or any other person;
- (e) the Applicant's obligations or any part of them being or becoming wholly or partially illegal, void or voidable, or unenforceable;
- (f) failure by the Company to give notice to the Guarantor of any default by the Applicant in connection with this Guarantee and Indemnity; or
- (g) any legal limitation, disability, incapacity or other circumstances related to the Applicant.

### 4. Warranties

The Guarantor warrants and represents to the Company that:

- (a) if it is a corporate entity, it is validly existing under the laws of its place of incorporation;
- (b) it has full power to enter into and perform its obligations under this Guarantee and Indemnity and to carry out the transactions contemplated by this Guarantee and Indemnity;
- (c) it has taken all necessary action to authorise its entry into and performance of this Guarantee and Indemnity and to carry out the transactions contemplated by this Guarantee and Indemnity; and
- (d) its obligations under this Guarantee and Indemnity are valid and binding and enforceable against it in accordance with their terms;
- (e) it has read and understood this Guarantee and Indemnity and has had the opportunity to obtain independent legal advice about its terms and effect;
- (f) if it is a trustee of a trust:
  - (i) the Guarantor enters into this Guarantee and Indemnity in both its capacity as trustee and in its personal capacity;
  - (ii) the Guarantor has the right to be indemnified out of trust assets, and the trust deed does not limit the Guarantor's indemnity against the trust;
  - (iii) the Guarantor has the power under the trust deed to enter into, and perform its obligations under, this

- Guarantee and Indemnity in its own right and in its capacity as trustee of the trust;
- (iv) the trust has sufficient assets to meet the Guarantor's liabilities and indemnities incurred by under this Guarantee and Indemnity;
  - (v) during the term of this Guarantee and Indemnity and for a period of 7 years after expiry or termination, the assets of the trust will not be reduced to a level materially below that which is sufficient to meet the Guarantor's liabilities and indemnities incurred by it under this Guarantee and Indemnity;
  - (vi) the Guarantor will not retire as trustee of the trust or appoint any new or additional trustee without advising the Company; and
  - (vii) the Guarantor and each of its successors as trustee of the trust will be liable under this Guarantee and Indemnity in its own right and as trustee of the trust, and nothing releases such party from any liability in its personal capacity.

**5. Miscellaneous**

- (a) If more than one person is named as Guarantor, each of them is liable for all of the obligations under this guarantee and indemnity both individually and jointly with any one or more other persons named as Guarantor.
- (b) Queensland, Australia law applies to this Guarantee and Indemnity.

## Execution

**Signed, sealed and delivered** as a deed poll.

[To be used for individuals providing the guarantee i.e. directors]

**Signed, sealed and delivered by the Guarantor in the presence of:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Guarantor's Signature

\_\_\_\_\_  
Witness' Name (Print)

\_\_\_\_\_  
Guarantor's Full Name (print)

[To be used for companies providing the guarantee i.e. trustees of a trust]

**Signed, sealed and delivered by the Guarantor:**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)