



Soilco Pty Ltd
 ABN 23764 015 953
 PO Box 199 Unanderra NSW 2526
 tel:: 02 4272 9944 fax:: 02 4272 9933
www.soilco.com.au

APPLICATION FOR COMMERCIAL ACCOUNT

Name ("the Applicant")

ABN ACN

Address.....Postcode.....

Business Phone No.....Fax No.....Email.....

Are you a;

Sole Trader Partnership Company
 Trust Company If a Trust, please state full names/company name of trustee.....

Names of Owners (in the case of a Sole Trader and Partnership) or Name of Directors (in the case of a Company)

Full Name.....Home Phone No.....

Home Address.....

Full Name.....Home Phone No.....

Home Address.....

Credit References;

1. Name.....Phone No.....

Address.....Contact.....

2. Name.....Phone No.....

Address.....Contact.....

3. Name.....Phone No.....

Address.....Contact.....

Estimated Monthly Purchases.....

1. The applicant applies to Soilco for a credit account.
2. Should this application be accepted by Soilco the applicant agrees that the credit account and any contract between Soilco and the applicant shall incorporate the usual Terms and Conditions of trade, a copy of which is annexed or can be obtained on application.
3. If the applicant is a corporation then the applicant and the person signing this application, if a director, acknowledge by their execution of the application that they are directors and shareholders of the applicant. In consideration of [in this case, Soilco Pty Ltd] providing credit facilities to the applicant the directors executing this application (and where more than one jointly and severally) covenant to [in this case Soilco] that they agree to secure and guarantee the performance of the applicant's obligations in respect of payment of accounts and interest and they will, if called upon by [Soilco] in default of payment of any account by the applicant, be liable to pay any and all outstanding monies due to Soilco as if they were a principal to this application.

4. The applicant shall notify Soilco of any change in the constitution or structure of the applicant or the sale of the business operated by the applicant and agrees that it shall continue to be liable to Soilco for any sums outstanding on the account opened on behalf of the applicant until;
 - (a) written notice is received from the applicant that it has changed the constitution or structure or the sale of the business.
 - (b) the account has been closed and full payment has been received by Soilco.
5. The applicant agrees that the terms and conditions applying to any credit account opened in the name of the applicant and the construction and interpretation of it shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account.

DATED this _____ day of _____ 200_____

SIGNATURE OF AUTHORISED OFFICER OF APPLICANT.....

PRINT NAME OF AUTHORISED OFFICER.....

INTERNAL USE ONLY APPROVED.....A/C No.....DATE.....

TERMS AND CONDITIONS OF TRADE

1 Interpretation

- 1.1 Unless otherwise inconsistent with the context the word "person" shall include corporation;
- 1.2 "goods" shall include services.
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.4 "Soilco" shall mean Soilco Pty Ltd its successors and assigns.

2 Offer and Acceptance

- 2.1 Any quotation made by Soilco is not an offer to sell or to provide goods. Soilco shall not be bound by any order given in pursuance of any quotation until Soilco accepts it in writing or by the commencement of supply or the provision of goods. Unless otherwise agreed in writing, all orders are subject to acceptance by Soilco within 30 days of receipt by Soilco of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Soilco and the purchaser. Any terms and conditions contained in any order, offer, acceptance or other document of the purchaser and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Insofar as goods or services supplied by Soilco are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the purchaser establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this contract by the Trade Practices Act 1974 (other than a condition implied by Section 69) is limited:
 - (a) in the case of goods to any one of the following as determined by Soilco;
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) The payment of the costs of having the goods repaired;
 - (b) in the case of services to any one of the following as determined by Soilco;
 - (i) the supplying of the services again, or
 - (ii) the payment of the cost of having the services supplied again.

3 Delivery

- 3.1 Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by Soilco in writing providing for liquidated damages for failure to deliver by the quoted date Soilco shall not be liable to the purchaser for any loss or damage howsoever arising even if arising out of the negligence of Soilco for failure to deliver on or before the quoted date. The purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by Soilco to deliver by the quoted date. Written advice to the purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

- 3.2 Soilco shall not be liable to any purchaser or any other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of Soilco or any other party, strike or any other industrial action be it of Soilco or other party, or any other cause whatsoever.
- 3.3 Soilco reserves the right to deliver by instalments and if delivery is made by instalments the purchaser shall not be entitled;
- (i) to terminate or cancel the contract; or
 - (ii) To any claim loss or damage howsoever arising for failure by Soilco to deliver any instalments on or before the quoted date.
- 3.4 It is agreed that Soilco shall not be responsible for delay in manufacture or delivery caused by, or in manufacture or delivery caused by, or in any way incidental to act of God, war, fire, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond Soilco's reasonable control.
- 3.5 Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the purchaser's order.

4 Payment

- 4.1 Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which the goods are invoiced to the purchaser.
- 4.2 This term as to the payment shall be of the essence of the contract.

5 Title

- 5.1 Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of Soilco as full legal and equitable owner until such time as the purchaser shall have paid Soilco the full purchase price together with the full price of any other goods the subject of any other contract with Soilco.
- 5.2 The purchaser acknowledges that he receives possession of and holds goods delivered by Soilco solely as bailee for Soilco until such time as the full price thereof is paid to Soilco together with the full price of any other goods then the subject of any other contract with Soilco.
- 5.3 Until such time as the purchaser becomes the owner of the goods, he will;
- (a) store them on the premises separately;
 - (b) ensure that the goods are kept in good and serviceable condition;
 - (c) secure the goods from risk, damage and theft; and
 - (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the purchaser.
- 5.4 (i) Until the goods are paid for in full, Soilco authorises the purchaser to sell the goods as its agent. However, the purchaser shall not represent to any third parties that it is acting in any way for Soilco. Soilco will not be bound by any contracts with third parties to which the purchaser is a party.
- (ii) Records shall be kept by the purchaser of any goods owned by Soilco.
 - (iii) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Soilco. The purchaser shall account to Soilco from this fund for the full price of the goods.
 - (iv) The purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the purchaser shall account forthwith to Soilco for the price of the goods forthwith.
 - (v) Should the purchaser die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Soilco may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract suspend or cancel this contract or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 5.5 In the event that the purchaser uses the goods/product in some manufacturing or construction process of its own or some third party, then the purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for Soilco. Such part shall be deemed to equal in dollar terms the amount owing by the purchaser to Soilco at the time of the receipt of such proceeds.
- 5.6 If the purchaser does not pay for any goods on the due date then Soilco is hereby irrevocably authorised by the purchaser to enter the purchaser's premises (or any premises under the control of the purchaser or as agent of the purchaser in which the goods are store at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever.

5.7 On retaking possession of the goods Soilco may elect to refund to the purchaser any part payment that may have been made and to credit the purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6 Risk

Unless otherwise agreed in writing, risk in the goods shall pass to the purchaser at the time when the goods have been placed on the vehicle which is to effect delivery from Soilco's depot or yard or delivery to the purchaser which ever is the sooner. The goods shall remain at the purchaser's risk at all times unless and until Soilco retakes possession of the goods pursuant to these terms and conditions.

7 Claims

7.1 Subject to clause 2.2 herein, Soilco shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with Soilco or occasioned to the purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of Soilco its servants or agents.

7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the purchaser, the purchaser shall within fourteen days notify Soilco in writing of the same.

7.3 Soilco shall not be liable in any circumstances for any;

(i) defects or damages caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation repair or alteration (other than by Soilco) or accident.

(ii) any transport freight charges installation removal labour or other costs;

(iii) defects in goods not manufactured by it but Soilco will endeavour to pass on to the purchaser the benefit of any claim made by Soilco and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the purchaser to proceed against Soilco pursuant to the Trade Practices Act 1974.

(iv) technical advice or assistance given or rendered by it to the purchaser or not in connection with the manufacture construction or supply of goods for or to the purchaser provided always that Soilco has rendered such services with due care and skill and that any material supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

7.4 The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not the loss or damage is caused by negligence or actions constituting fundamental breach of contract.

8 Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Soilco, Soilco is unable to perform in whole or in part any obligation under this agreement Soilco shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the purchaser in respect of such inability.

9 Default

Upon the occurrence of default by the purchaser in compliance with the terms or any other agreement with Soilco herein;

9.1 Soilco may at its discretion withhold further supplies of goods or cancel this agreement, or vary the terms of this agreement without prejudice to its rights hereunder PROVIDED HOWEVER that Soilco may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

9.2 The purchaser shall pay to Soilco interest at the rate of 1.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the purchaser.

9.3 Without prejudice to any other right or remedy the purchaser shall indemnify Soilco against any costs' fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the purchaser to Soilco on an indemnity basis and any fees, charges, disbursements or commissions charged by any mercantile agency or debt collecting firm.

9.4 The purchaser shall pay to Soilco an administration fee of \$50.00 on the occurrence of every event of default.

10 Charge

The Purchaser hereby charges with payment of any indebtedness to Soilco all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by Soilco, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being

so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Soilco to be its true and lawful attorney to execute and register such instruments.

11 GST

The Purchaser must pay to Soilco any amount which is payable by Soilco in respect of any supply to the Purchaser on account of GST. Each charge or fee for a supply rendered by Soilco does not include an amount to cover the liability of Soilco for GST on any supplies made under this agreement which are taxable supplies within the meaning of the GST Act. In relation to taxable supplies made under this agreement Soilco agrees to issue the Purchaser with a tax invoice in accordance with the GST Act or a document satisfying the minimum information requirement set out in GSTR 2000/2003 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice. "GST" means GST as defined in a New Tax System (Goods and Services Tax Act 1999). "Supply" means supply as defined in a New Tax System (Goods and Services Tax Act 1999).

12 Trusts

- 12.1 This clause applies if the Purchaser is a trustee and whether or not Soilco has notice of the Trust.
- 12.2 Where the Purchaser comprises two or more persons and any of those persons is a Trustee this clause applies to such Trustee.
- 12.3 The Purchaser agrees that even though the Purchaser enters into this Agreement as Trustee of the Trust, the Purchaser also shall be liable personally for the performance and observance of every covenant to be observed and performed by the Purchaser expressed or implied in this Agreement.
- 12.4 The Purchaser warrants its complete, valid and unfettered power to enter into this Agreement pursuant to the provisions of the Trust including power to obtain the credit facility from Soilco and to enter into the covenants to be observed and performed by them expressed or implied in this Agreement and warrants that its entry into this Agreement is in the due administration of the Trust.
- 12.5 The Purchaser covenants that the rights of indemnity which it may have against the property of the Trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).
- 12.6 The Purchaser shall not, without Soilco's prior written consent:
- (i) resign or be removed as Trustee of the Trust or appoint or allow the appointment of a new or additional Trustee of the Trust;
 - (ii) amend or revoke any of the terms of the Trust;
 - (iii) vest or distribute the property of the Trust or advance or distribute any capital of the Trust to a beneficiary or resettle any of the property of the Trust;
 - (iv) permit a beneficiary to have the use, occupation, employment or possession of the property of the Trust;
 - (v) do or permit or omit to do an act or thing in breach of the Trust or which would permit the Trustee to be removed as Trustee of the Trust;
 - (vi) exercise or permit or allow to be exercised a power to change the vesting date of the Trust or provide for an early determination of the Trust;
 - (vii) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the Trust; or
 - (viii) pay any of the income of the Trust to any beneficiary of the Trust if such payment will prejudice or affect the Purchaser's ability to pay all monies due to Soilco.

13 Service

The parties agree that service of any notices, demands, proceedings summons suits or actions (process) upon the Purchaser may be effected by Soilco or its solicitors sending such process by prepaid post to the address given in the Credit Application as the address of the Purchaser. Service shall be deemed to have been effected two business days after the posting of the process.

PRIVACY PROTECTION INFORMATION

Acknowledgment & Consent

To: Soilco

Notice and Acknowledgment that Credit Information May be Given to a Credit Reporting Agency

I/We understand that Section 18E(c) of the Privacy Act allows you to give a credit reporting agency certain personal information about me/us which I/we authorise you to do. The information which may be given is covered by Section 18E(1) of the Act.

Authority to Obtain Credit Information

I/We authorise you to obtain from a credit reporting agency;

- a credit report containing personal credit information about me/us for the purpose of assessing an application by me/us or my/our company/firm for commercial credit;
- other information relating to my/our commercial credit activities;
- a credit report containing personal information about me/us for the purpose of the collection of overdue payments in respect of commercial credit which you have provided to me/us or my/our company/firm;
- a credit report containing personal credit information about me/us for the purpose of assessing whether to accept me/us as a guarantor.

Authority to Exchange Information with Other Credit Providers

I/We authorise you to give to and obtain from:

- credit providers named in my/our credit application;
- any agent of yours that is deemed to be a credit provider pursuant to Section 11B(5) of the Act; and
- any credit provider that may be named in a personal or commercial credit report issued by a credit reporting agency or a commercial reporting agency respectively.
- Information about my/our personal or commercial credit arrangements which can include information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act, 1988 and the information may be given and used for purposes that include the following;
 - to assess an application by me/us for personal or commercial credit;
 - to assist me/us avoid defaulting on my/our credit obligations;
 - to notify other credit providers of a default by me/us;
 - to assess my/our credit worthiness; and
 - to assess my/our position if I/we fall into arrears.

Name and address of individual/s

giving his/her consent.....

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Signature of individual/s

giving his/her consent.....

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