



A. C. Whalan & Co Pty Ltd - ABN 90 003 499 849
ACN 003 499 849

**COMMERCIAL CREDIT ACCOUNT APPLICATION
AND
TERMS OF TRADE AGREEMENT**

To: A. C. Whalan & Co Pty Ltd - ABN 90 003 499 849 and its successors and assigns ("**Supplier**")

1. **CUSTOMER:**

ABN:

BUSINESS ADDRESS:

**CORRESPONDENCE
ADDRESS:**

TELEPHONE:

OFFICE: ()

MOBILE:

EMAIL:

DRIVERS LICENCE NO.:

**EMPLOYER NAME AND
ADDRESS:**

2. **GUARANTOR:**

ABN:

BUSINESS ADDRESS:

**CORRESPONDENCE
ADDRESS:**

TELEPHONE:

OFFICE: ()

MOBILE:

EMAIL:

DRIVERS LICENCE NO.:

**EMPLOYER NAME AND
ADDRESS:**



3. APPLICATION: The Customer applies for a credit account and agrees that the attached Terms and Conditions of Sale will govern all dealings between the Customer and the Supplier.

4. CREDIT LIMIT REQUESTED:

\$

5. MEANS AND ABILITY TO PAY: The Customer warrants that it is solvent and has the future ability to pay all of its debts as and when they fall due.

6. ACCEPTANCE: The Supplier will be deemed to have accepted this Application if it allows the Customer to trade with it on credit.

7. PERSON COMPLETING APPLICATION:

Name:	
Position:	
Signature:	Date: / /

(Signed for and on behalf of the Customer)

The person completing this Application on behalf of the Customer **HEREBY REPRESENTS AND WARRANTS** that the information set out hereon is true and correct and he/she is duly authorised to sign this application on behalf of the Customer and **ACKNOWLEDGES** that the Supplier will rely upon and be induced thereby to grant credit and/or to deal with the Customer.

8. CREDIT INFORMATION:

The Customer and the person completing this Application irrevocably authorise the Supplier, its servants and agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer and the person completing this Application from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer, any credit provider or Credit Reporting Agency and including personal credit and consumer credit information (together "the information sources"). The Customer and the person completing this Application hereby authorise the information sources to disclose to the Supplier such information concerning the Customer and the person completing this Application which is within their possession.

The Customer and the person completing this Application agree that the information provided on this Application concerning the Customer and the person completing this Application and any relevant trading information arising from any dealings between the Customer and the Supplier may be disclosed to a Credit Reporting Agency or any other interested person. The Supplier's full privacy notice is included at Section 10. of the attached Terms and Conditions of Sale.



**DIRECTORS/PARTNERS/
SOLE TRADERS:**

	Name	Address	Date of Birth
1.			
2.			
3.			
4.			

TRADE REFERENCES:

	Company/Business	Address	Telephone
1.			
2.			
3.			
4.			

FINANCIAL DETAILS:

Bank	BSB	Account no.	Telephone



A. C. Whalan & Co Pty Ltd - ABN 90 003 499 849
ACN 003 499 849

AGREEMENT TO GUARANTEE AND INDEMNIFY

DEED POLL made _____ 20 _____

BY: The Guarantors referred to below ("**Guarantors**")

IN FAVOUR OF: A.C. Whalan & Co Pty Ltd ABN 90 003 499 849 and its successors and assigns (**Supplier**).

1. **We Agree** to be bound to the attached Terms and Conditions of Sale as if we are the principal Customer.
2. **We Guarantee** payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by

_____ ABN _____ ("**the Customer**")
(insert) (insert)

or any of us arising from any past, present or future dealing with you.

3. **We Indemnify You** against all loss, costs (including but not limited to any default costs (including but not limited to costs on a solicitor/client basis or damage of any nature arising from any past, present or future dealing with the Customer or any of us.
4. **We Agree (a)** to pay to a stakeholder nominated by you the amount you certify is payable before being entitled to dispute whether that amount is payable **(b)** that this Deed Poll shall remain effective notwithstanding any conduct or event (whether or not agreed to by you) which, but for this clause, may have released or varied any obligation of the Customer or any of us **(c)** that any payment to you which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid.
5. **Consideration:** You granting financial accommodation or other credit from time to time at your discretion to the Customer.
6. **Proper Law:** We agree that this Agreement and any claim or dispute between you and any of us shall be governed by the law applicable in New South Wales.
7. **Several Guarantors:** If more than one Guarantor is named or intended to sign as guarantor, we each agree to be bound joint and severally, and liable for the full amount owed to you, even if we are the only one to sign and whether or not any amount is extinguished or compromised in any way. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting our liability to you.
8. **We Warrant** that the Guarantors are all of the directors / partners / proprietors of the Customer.
9. **Credit Limit:** Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.



10. **Privacy Act:** You may make any enquiries you deem necessary to investigate our creditworthiness including enquiry with our bankers, any other credit provider or any credit reporting agency (“**the sources**”). We authorise the sources to disclose anything concerning us which is in their possession. We agree that you may disclose any information you have concerning us to the sources. We understand that a full copy of your privacy notice is included at Section 10. of the Terms and Conditions of Sale.
11. **Severability:** Any part of anything herein shall be severable without affecting any other part hereof.
12. **Read and Understood:** We have each read and understood this document and have been advised by you to obtain independent professional advice before signing it.
13. **Definitions:** (a) “You” and “Your” means the Supplier; and (b) “We” and “us” means each of the Guarantors jointly and severally and their respective executors, administrators, successors and permitted assigns (as the case may be).

EXECUTED as a deed

THE GUARANTORS

1.	_____	of	_____
			Signature
	Witness		(print name)
2.	_____	of	_____
			Signature
	Witness		(print name)
3.	_____	of	_____
			Signature
	Witness		(print name)
4.	_____	of	_____
			Signature
	Witness		(print name)

IMPORTANT NOTICE: If you sign this Guarantee, you may be required to pay someone else’s debts. You should ensure that you read and understand the terms of this Guarantee. If necessary, seek independent professional advice.



TERMS AND CONDITIONS OF SALE

All goods and services purchased from A.C. Whalan & Co. Pty Limited ACN 003 499 849 ("**the Company**") and any of its divisions are sold subject to the following terms and conditions of sale which shall prevail notwithstanding any other document, terms and conditions and/or anything else except a written agreement signed by the Customer and the Company, except only for such terms, guarantees, indemnities or other obligations as are implied or imposed by or under any law and which cannot be excluded.

1. Definitions

The following definitions have the following meaning in these Terms and Conditions of Sale.

Company means A.C. Whalan & Co Pty Limited ACN 003 499 849.

Customer means the customer detailed in the Commercial Credit Account Application.

GST means Goods and Services Tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Goods and Services means the goods and services provided by the Company to the Customer.

Price means the price payable by the Customer to the Company for the Goods and Services.

Terms & Conditions means these Terms & Conditions of Sale, together with the Commercial Credit Account Application attached and any associated quote, order or invoice.

2. Price & Goods and Services Tax ('GST')

The price by the Customer to the Company will be the price current at the time of order or supply unless otherwise agreed in writing. GST and/or any other Government imposts whatsoever applicable to the supply of goods and/or services will be payable by the Customer.

3. Orders and Cancellations

- (i) The Company may in its absolute discretion refuse to supply goods or services for any reason whatsoever.
- (ii) Should there be any discrepancy between the order by telephone as recorded and processed by the Company and later confirmation in writing by the Customer, the Company's record of telephone order shall prevail.
- (iii) Once an order has been accepted by the Company, the Customer can only cancel, vary or suspend the order (whether in whole or in part) if the Company agrees in writing to such cancellation, variation or suspension.
- (iv) The Customer agrees to accept delivery of all goods held by the Company or in transit in respect of such order.
- (v) The Customer agrees to pay all costs, expenses and liabilities incurred by the Company in consequence of the cancellation, variation or suspension of the order and accepts consequential delay.

4. Delivery

- (i) Unless agreed otherwise in writing prior to delivery, unloading of goods shall be the Customer's responsibility and the Company will not be responsible for any damage whatsoever resulting from the unloading of the goods by the Customer or by anyone on its behalf, or by the Company's employee or agent.
- (ii) The Customer indemnifies the Company from any claim whatsoever resulting from the Customer, its employee or agent loading goods supplied by the Company on any vehicle or unloading goods supplied by the Company from any vehicle.
- (iii) Where goods are delivered to a particular site the goods will be entirely at the Customer's risk when delivered.
- (iv) If the cartage contractor or driver is not satisfied that access to the delivery site is safe the goods will be unloaded at kerbside adjacent to the delivery address.
- (v) A quantity, description, date, time and place of delivery as shown on the Company's invoice or delivery docket shall be conclusive evidence of quantity, description, date, time and place of delivery of such goods.
- (vi) If the site is unattended goods will be unloaded on the site or if the site is not accessible at the kerbside adjacent to the site and the delivery docket/manifest signed by the cartage contractor or the driver of the Company that the goods were delivered accordingly shall be conclusive evidence of due delivery of the goods.
- (vii) The Company if requested to enter a property accepts no responsibility for any damage caused by the Company or its agent.
- (viii) Where trucks are held on a site for more than 1 hour, additional costs will apply and will be invoiced to the customer separately.
- (ix) Deferred delivery of goods already manufactured for the Customer will incur a storage charge per week. The weekly amount charged to the customer will be advised by the Company upon deferment notification from the Customer.

5. Invoicing & Payment

- (i) The Company must submit a tax invoice to the Customer in respect of goods or services provided on delivery of goods or completion of the services.
- (ii) Payment for goods and services purchased from the Company shall be made before delivery or in the case of Customers who have an account with the Company payment must be received by the last working day of the month after the month of invoice.
- (iii) The Customer shall not be entitled to retain any money owing to the Company notwithstanding any default or alleged default by the Company including the supply of defective or allegedly defective goods or delay or alleged delay in supply.



(iv) The Customer will pay to the Company without deduction or set-off all moneys owing to the Company.

(v) The Company shall be entitled at any time to set-off any moneys then or contingently owed to the Company by the Customer against any debt the Company owes to the Customer.

6. Default and interest

An event of default for the purposes of this clause includes (hereinafter referred to as an “**Event of Default**”):

- (a) Any money payable by the Customer becomes overdue;
- (b) The Customer exceeds its credit limit;
- (c) The Customer becomes insolvent or bankrupt, 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; or
- (d) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

If an Event of Default occurs in any payment, or if in the opinion of the Company, the Customer is unlikely to be able to meet its liability as it falls due then the Company may at its option:

- (i) require payment forthwith of all amounts owing by the Customer to the Company, whether or not such amounts are then due for payment including without limitation, all interest, administration and collection charges and all legal costs (including but not limited to costs on a solicitor/client basis and administrative costs) and any payment by the Customer shall be first applied to such charges and costs;
- (ii) terminate any contract or contracts in relation to goods which have not been delivered and/or withdraw credit.
- (iii) The Company may charge interest on any overdue amount at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by the Company. Such interest will be payable on demand by the Company and for so long as it remains unpaid will compound on a monthly basis.

7. Title

- (i) Property in any goods supplied by the Company and any proceeds arising therefrom shall remain the sole and absolute property of the Company as legal and equitable owner until the full price for all goods and services supplied is received by the Company.
- (ii) Risk in the goods shall pass to the Customer on delivery to the Customer or its agent.
- (iii) The Customer irrevocably authorises the Company to repossess any goods supplied by the Company to the Customer, and to take possession of any proceeds therefrom, without any notice if the Customer fails to

make any payment when it is due or if in the opinion of the Company the payment of any amount in respect of goods and services supplied by the Company is in jeopardy or the Customer commences to be wound up or is placed in administration or under official management or into liquidation or suffers a receiver or manager to be appointed in respect of any of its assets. For those purposes the Customer, in consideration of credit being given, irrevocably authorises the Company to enter onto any land or premises of the Customer or to which the Customer has a right of entry. The Company has the right to take or collect any proceeds and to resell any repossessed goods.

(iv) The Customer will prior to attaching any goods onto any land or building notify the owner of the land or building that such goods are subject to this reservation of title clause, except only as provided by law.

(v) On the Company repossessing goods or taking possession of proceeds the Customer's debt to the Company continues and is reduced only by the net amount after costs the Company realises from the proceeds or from the resale of the repossessed goods.

(vi) The Customer releases and indemnifies the Company and its servants or agents from all claims for loss or damage caused by the Company or its servants or agents in enforcing or attempting to enforce its rights under these Terms and Conditions of Sale.

8. Personal Property Securities Act 2009 (Cth) ('PPSA')

- (i) Terms used in the PPSA have the same meaning in clause 6. and in this clause and 'section' refers to a provision of the PPSA.
- (ii) This clause applies to the Company's security interests in goods it supplies to the Customer and in proceeds derived therefrom.
- (iii) The Customer waives its right under section 157(1) to notice of verification of any registration applied for by the Company.
- (iv) The Company can apply amounts received from the Customer towards amounts owing by the Customer in any order it chooses.
- (v) The Company may enforce its security interests by exercising all or any of its rights under the PPSA, these Terms and Conditions of Sale or general law.
- (vi) To the maximum extent permitted under the PPSA the parties contract out of the following sections - 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, 143 and the second sentence of section 126(2).
- (vii) The Customer must at its own expense do anything the Company requires of it to ensure the Company's security interest is perfected and has priority, to obtain and maintain registration of the Company's security interests or to enforce those interests.



(viii) The Customer is liable for all fees and other expenses incurred by the Company in registering a security interest in goods supplied to the Customer or in the proceeds derived therefrom, and all costs of maintaining or changing a registration.

9. Limitation of Liability

(i) The Company may compute an estimate of dimensions and quantities of goods based on plans or other information given by or on behalf of the Customer. The Company does not accept any liability as to the correct computation of any such estimate and the estimate is provided to the Customer as indicative only and the Company is not responsible for any mistakes in the estimate. The Customer undertakes to check any such estimate and in any event accepts full responsibility for the dimensions and quantities of goods ordered as independently computed by the Customer without relying on the estimate.

(ii) The Customer warrants to the Company that it will not rely on representations made and/or advice given by the Company or its employees in connection with the design, dimensions, installation or use of goods sold and agrees that the Company shall not be liable for the consequences of any mistakes in such representation or advice even if made or given negligently.

(iii) It is a condition of sale that any description or specification given by the Company or in printed literature of the Company is for general indicative purposes only and does not render the Company responsible in any way except to the extent that the goods shall comply with the standards set out in such description or specification and that such description or specification shall not be taken as implying or giving any undertaking as to fitness for any particular purpose.

(iv) If goods are required for a particular purpose, the Customer must clearly specify that purpose in writing in the order placed with the Company and obtain written assurance from the Company that the goods when supplied will meet that requirement. If the Customer does not specify the particular purpose and the Company does not expressly undertake in writing that the goods will be fit for the specified purpose, then the Customer agrees that it did not rely on the skill or judgment of the Company in relation to the suitability of the goods for a particular purpose.

(v) The Company shall not be liable for delay in delivery of the goods or delivery of the goods in instalments or failure to deliver due to any cause whatsoever. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of any delay in or the instalment delivery of the goods. In no event shall the Company be responsible for any loss of profits, penalties, disruption, expenditure and/or damages incurred and/or sustained by the Customer due directly or indirectly to

because of any delay in or the instalment delivery of the goods.

(vi) Any complaint by the Customer for failure to deliver or delayed delivery must be notified to the Company in writing within three (3) business days of the failure or delay in delivery. The Customer waives, foregoes, abandons and forgives forever any claim whatsoever the Customer may have against the Company unless it has strictly complied with these notification requirements.

(vii) If the goods are delivered by the Company to the Customer in a damaged state or there is short delivery or incorrect or faulty goods are supplied, the Customer must request the Company in writing for their replacement within eight (8) hours of the delivery of the alleged damaged, short supplied, incorrect or faulty goods and the Customer must at the time of the delivery, specify in the delivery docket to be given to the deliverer the nature and extent of the alleged damage, short supply or incorrectness of the goods.

(viii) Any goods returned by the Customer will be held and/or disposed of by the Company on behalf of the Customer unless the return of the goods is preceded by the complaint and the claim in writing as specified in the preceding paragraph. The Customer must facilitate the inspection of the goods by a Company representative prior to return. The acceptance of any returned goods shall not imply any acceptance by the Company of the Customer's claim.

(ix) Any claim, whatsoever against the Company arising in contract or otherwise howsoever and whether directly or indirectly from the sale and delivery of goods including without limitation for failure to deliver, delayed delivery, short delivery, supply of incorrect goods, damaged goods and/or defective goods shall be limited to the price of the goods which was agreed by the Customer and the Company or in the absence of such agreement a reasonable price therefor confined to the quantity of the goods required to be delivered on the occasion by reference to which the claim arises.

(x) To the fullest extent permitted by law all terms, conditions, guarantees, indemnities and warranties statutory or otherwise ('Obligations') not expressly provided in these Terms and Conditions of Sale are excluded. To the extent that any such Obligation cannot be excluded due to provisions the Competition and Consumer Law 2010 (Cth) or any other statute and the Customer makes a claim with which the Company accepts or which is proven to be valid, then, to the extent permitted by law, the Company's liability is limited, at the Company's option, to repairing or replacing the relevant goods o cost of repair or replacement.



(xi) The Customer will indemnify the Company for any claims whatsoever and howsoever made by a third party against the Company for any default of the Company or the Customer relating to or directly or indirectly arising from any contract and/or arrangement made between the Company and the Customer or any goods or services provided by the Company to the Customer or by the Customer to a third party.

10. Applicable Law

(i) The Contract is governed by the laws of the of the State or territory in which the goods are supplied and the services performed.

(ii) The Company and the Customer irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the goods are supplied and the services performed and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with the Contract.

11. Privacy notice to individuals, guarantors & directors

(i) The Customer acknowledges having read the Company's Privacy Policy available on the Company website.

(ii) The Company collects personal information for purposes including but not limited to assessment of credit applications, administering products and services, market research, direct or indirect marketing, business development, debt recovery and management of customer relationships. Such personal information includes but is not limited to identity particulars, employment details, the fact that the applicant has applied for credit with the Company and the amount of credit provided, payment defaults, updates on adverse information, dishonoured cheques and trade references.

(iii) If the personal information is not collected, the Company may be unable to, amongst other things, provide goods on credit, deliver products, communicate with you or improve products and services.

(iv) The Company may disclose personal information to its related entities, subcontractors, service providers, your guarantors (where applicable), your representatives, other credit providers and credit reporting bodies.

Personal information may also be disclosed to overseas countries.

(v) Credit reporting bodies may include personal information in reports which are provided to credit providers to assist them to assess the applicant/guarantor's creditworthiness. If you fail to meet your payment obligations in relation to credit or commit a serious credit infringement (e.g. fraud), the Company may disclose this to a credit reporting body.

(vi) You may request that credit reporting bodies not disclose credit reporting information:

- a) for the purpose of pre-screening of direct marketing by a credit provider; and
- b) where you believe on reasonable grounds that you have been or are likely to be a victim of fraud.

12. Intellectual Property

Where the Company develops a product for the Customer, then all intellectual property, including the copyright in all such designs, drawings, documents, plans, schedules and products remain vested in the Company.

13. General

(i) Amendments to these Terms & Conditions may only be made in writing with the consent of the parties.

(ii) In the event of any inconsistency between these Terms & Conditions and any other associated document that the parties have entered into, these Terms & Conditions shall prevail.

(iii) The Customer has made its own enquiries prior to entering into these Terms & Conditions and has entered into these Terms & Conditions relying on the Customer's own enquiries.

(iv) The parties may sign these Terms & Conditions by electronic means subject to complying with the Electronic Transactions Act 2000 (NSW) (as amended or replaced).

(v) Any notice or demand to be given under, or in relation to, the Terms & Conditions will be deemed to be duly given or made if it is in writing and, in the case of any party:

- (a) handed to the other party; or
- (b) sent by prepaid post to the other party at the address stated on the Commercial Credit Account Application; or
- (c) if sent by email, to the other party's last known email address; and any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.