



APPLICATION FOR COMMERCIAL CREDIT

The Client applies to the Company to supply goods and/or services to the Client on the terms of this Application for Commercial Credit which incorporates the attached Terms and Conditions, Privacy Statement and Deed of Guarantee & Indemnity.

Upon acceptance by the Company, the Company may supply goods and/or services to the Client on the terms and conditions of this Application for Commercial Credit.

Client

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Contact person		Telephone	
Fax		Email	
Name of bank		Branch	
Account no.		BSB	
Date business commenced		Nature of business	

Details of directors/partners/sole traders

Name		DOB	
Residential address		Drivers licence	
Title		Mobile	

Name		DOB	
Residential address		Drivers licence	
Title		Mobile	

Trade references

Name		Telephone	
Email		Fax	
Address			

Name		Telephone	
Email		Fax	
Address			

Name		Telephone	
Email		Fax	
Address			

TERMS AND CONDITIONS

Definitions

1. In these terms and conditions:

'Additional Charges' means any and all amounts which are or may become payable by the Client under this agreement and/or any Hire Contract in addition to the Hire Charge, including, but not limited to, consumables, installation, movement, dismantling and collection charges, transport charges, toll charges, levy offences (i.e. parking tickets), traffic management expenses, cleaning fees, decontamination costs, recovery charges, and any other costs and/or expenses incurred by the Company and/or resulting from the loss and/or damage to the Goods during the Risk Period.

'Client' means the person, firm, organisation, partnership, corporation, trustee of a trust or other entity (including their successors and permitted assigns) that is either hiring or purchasing Goods from the Company.

'Company' means Matt Molloy Pty Ltd ACN 137 461 271 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

'Commencement Date' means the date the Hire Period commences, being the earlier of:

- (a) the date of delivery of the Goods to the Client; or
- (b) the date the Client collects the Goods from the Company's premises.

'Fair Wear and Tear' means wear and tear which would be normal for similar Goods being used in normal conditions but excludes dents or other impact damage.

'Goods' means any and all scaffolding, temporary fencing, and/or equipment (including, unless otherwise agreed, any replacement parts, components, and other items used to service and maintain the Goods), including associated or attached accessories, parts and/or other goods hired or sold by the Company to the Client, as the context requires.

'Hire Charge' means the amount payable by the Client to the Company to hire the Goods for the Hire Period, as based on the Company's current price list (as amended from time to time) or as based upon the rates set out in the Hire Contract.

'Hire Contract' means a contract between the Company and Client for the hire of Goods.

'Hire Period' means the term the Goods are hired by the Client as agreed between the parties and starting on the Commencement Date.

'Incidental Costs' means the costs associated with any notices, licenses, authorities and/or fees required by any governmental body or other authority.

'PPSA' means the *Personal Property Securities Act 2009*.

'PPSR' means the Personal Property Securities Register.

'Risk Period' has the meaning given to it by clause 42.

'Schedule' means a schedule or other document executed by the Company and the Client forming part of the Hire Contract.

'Services' means and includes the erection, movement and dismantling of the Goods and any other services provided by the Company from time to time.

'Site' means the location where the Goods and/or Services are to be supplied.

Formation of contract

2. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Company, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a Hire Contract or contract for sale in accordance with clause 6.

3. Unless specified otherwise, quotations shall be based upon Services performed during normal working hours within a normal working week. If requested by the Client, the Company may from time to time agree to perform Services outside normal working hours, in which case, a minimum four (4) hour shift shall be chargeable in respect of each worker required by the Company, and the extra cost shall be payable by the Client to the Company as a variation in accordance with clauses 20 to 22.

4. Unless specified otherwise, quotations specifically do not include:

- (a) GST, hire duty, or any other consideration payable for a taxable supply;
- (b) Additional Charges; or
- (c) Incidental Costs.

5. For the avoidance of doubt, the Client understands and agrees that:

- (a) the Client shall be required to pay for all Incidental Costs;
- (b) notwithstanding clause 5(a), the Company may, at its sole discretion, apply for any notices, licenses and/or authorities, and make payment of any Incidental Costs, if required to fulfil its obligations under this agreement (and/or any Hire Contract);
- (c) in the event that the Company has incurred any Incidental Costs in accordance with clause 5(b), the Client shall indemnify the Company for the full amount of the Incidental Costs incurred by the Company.

6. Quotations made by the Company are considered to be an invitation to treat only and will not be construed as an offer or obligation to supply in accordance with the quotation. The Company reserves the right to accept or reject, at its discretion, any offer received by it upon provision of written reasons to the Client. Only written acceptance by the Company of the Client's offer will complete a Hire Contract or contract for sale.

7. Placement of an order, either verbally or in writing, will imply acceptance of these terms and conditions.

8. At the Company's sole discretion, a deposit or other form of security may be required. The deposit amount due will be stipulated at the time of the order and shall immediately become due and payable upon the formation of a contract in accordance with clause 6.

Hire Contract documentation

9. Where the Client engages the Company to supply Goods on hire, the Client acknowledges that the Hire Contract is comprised of the following documents:

- (a) the Schedule;
- (b) these terms and conditions; and
- (c) any annexure or attachment.

10. In the event of any inconsistency or conflict between the documents which make up the Hire Contract, the order of precedence (highest to lowest) detailed in clause 9 shall apply.

Hire Period

11. The Hire Period shall commence on the Commencement Date and shall continue thereafter until the conclusion of the Hire Period, unless:

- (a) the Hire Period is extended in accordance with clause 13 hereof; or
- (b) the Hire Period is terminated earlier in accordance with these terms and conditions.

12. Upon delivery of the Goods in accordance with clauses 29, the Client must inspect the Goods and must, within twenty-four (24) hours, notify the Company if the Goods are unsuitable for the purpose of hire or are not in good order. If the Client fails to provide the Company with such notice, then, to the extent permitted by law, the Client shall be deemed to have inspected the Goods and accepted the Goods in the condition they were provided and satisfied itself as to the suitability of the Goods for the purpose of hire.

13. At any time up until the conclusion of the Hire Period, the Client may request that the Hire Period be extended. The Company may in its sole discretion agree to such an extension and shall specify the period by which the Hire Period is to be extended (**Extended Hire Period**).

14. If the Company agrees to an extension of the Hire Period pursuant to clause 13, the Client shall be liable to pay to the Company additional charges to hire the Goods in accordance with the rates set out in the Hire Contract or as otherwise agreed.

15. Upon conclusion of the Hire Period (or Extended Hire Period, as the case may be), the Client shall be liable to pay to the Company additional charges at the applicable daily rate for each day (or part thereof) until such time as the Goods are either:

- (a) collected by the Company; or
- (b) returned to the Company's premises.

16. Upon conclusion of the Hire Period (or Extended Hire Period, as the case may be):

- (a) if it is agreed that the Goods are to be collected by the Company, the Client shall ensure that the Goods are ready for collection by the Company at the time and place agreed between the parties in the same state of cleanliness and condition that

they were in at the time the Client took possession of them (Fair Wear and Tear excepted); or

- (b) if it is agreed that the Goods are to be returned to the Company's premises by the Client, then the Client shall return the Goods to the Company's premises by the time and date required in the same state of cleanliness and condition that they were in at the time the Client took possession of them (Fair Wear and Tear excepted).

Payment terms

17. In consideration of the Company hiring the Goods to the Client, the Client agrees to pay to the Company:

- (a) the Hire Charge; and
- (b) all Additional Charges.

18. Subject to clause 19, the terms of payment are strictly fourteen (14) days from the date of invoice (or such other period as nominated by the Company herein or as otherwise set out in the Hire Contract).

19. Where the Client does not have an approved commercial credit account with the Company, payment shall be, at the Company's sole discretion, due and payable:

- (a) on or prior to delivery of the Goods; or
- (b) as set out in the Hire Contract.

17. The Client must check all invoices and advise the Company of any errors or omissions within seven (7) days of receipt. Failing advice from the Client that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Company.

18. Should the Client not pay for the Goods hired or sold by the Company in accordance with the terms provided, or as agreed in writing by the parties from time to time, after issuing a written demand to the Client demanding payment within fourteen (14) days, the Company will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.

19. The Client acknowledges that the Company shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by the Company.

Variations

20. Where the Client requests or directs that any Goods and/or Services be supplied that is not strictly in accordance with the Hire Contract, then such Goods and/or Services shall constitute a variation, unless otherwise agreed between the parties.

21. The Client understands and agrees that:

- (a) all variations must be agreed between the parties in writing prior to the Goods and/or Services being supplied; and
- (b) all variations shall be, at the Company's discretion, invoiced at the rate(s) specified in the Hire Contract, as specifically quoted, or in accordance with the Company's prevailing price list (as updated from time to time).

22. Notwithstanding clauses 20 and 21, and subject to any rights the Client might have under any relevant legislation, the Company reserves the right to vary the Hire Charge if:

- (a) there is any movement in the cost of supplying the Goods and/or Services specified in the Hire Contract (including, without limitation, any increase or decrease in the cost of labour, transport charges, and/or additional costs caused by unforeseen circumstances and/or waiting time (unless caused by the Company)); or
- (b) the Client requires the Company (including its employees, agents and servants) to be subject to Site specific requirements, such as medical requirements or inductions;
- (c) otherwise provided for in these terms and conditions.

Cancellation of orders

23. Once a Hire Contract has been formed in accordance with clause 6, the Client may not cancel a Hire Contract unless the Client pays to the Company (in the Company's sole discretion):

- (a) all amounts due and payable under the Hire Contract; and
- (b) any Additional Charges.

24. Notwithstanding any other rights the Company may have under this agreement (and/or any Hire Contract), the Company may cancel any Hire Contract or contract for sale by providing written notice to the Client if the Client:

- (a) defaults in payment of any invoice by the due date;
- (b) enters into liquidation or, in the case the Client is an individual, becomes bankrupt; or
- (c) breaches an essential term.

25. To the fullest extent permitted by law, the Company accepts no liability for any loss whatsoever incurred by the Client or any third party as a result of the Company exercising its rights under clause 24.

Delivery

26. The Client shall be liable for all costs associated with delivery and collection of the Goods, including freight, insurance, handling and other charges, unless specified otherwise in writing.

27. The Client acknowledges and accepts that any estimated delivery or supply of Goods provided by the Company is an estimate only and the Company will not be liable for any loss suffered by the Client as a result of any delay in delivery or non-delivery of the Goods.

28. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).

29. Delivery of the Goods are deemed to have occurred when the Goods are collected by the Client from the Company's premises or transported to the Site, and deliver, delivering, and delivered each have a corresponding meaning.

30. Prior to the Goods being delivered, the Client must ensure that:

- (a) an authorised person is in attendance at the Site at the time of delivery in order to confirm the Client's receipt and acceptance of the Goods by signing a delivery docket;
- (b) the Site is cleared and ready for the installation of the Goods and that the foundations and structure on/or to which the Goods are to be installed have adequate bearing strength capacity to withstand the support of all forces imposed upon them from the Goods;
- (c) all electrical wiring and telephone and data cables within three (3) metres of the installation area are covered prior to commencement of the installation of the Goods;
- (d) there are adequate tying positions for the Goods; and
- (e) site amenities required by the Company, including, without limitation, water, electricity and sanitary accommodation, and accommodation for the storage and protection of the Goods are provided for the Company's use at no expense to the Company.

31. If the Client retains the Company to deliver the Goods, the Company is entitled to charge:

- (a) a reasonable fee for redelivery charges in the event the Client does not, or is unable to, accept delivery of the Goods; and
- (b) the Client for any costs which the Company incurs as a result of any delay in the delivery of the Goods caused by the Client, its agents, or employees.

32. The Client accepts that the Company may deliver the Goods in instalments and may require payment for each separate instalment in accordance with these terms and conditions.

33. The Client acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery of the Goods or non-delivery of the Goods.

Returns

34. Goods wrongly ordered and returned will incur a handling and administration charge of fifteen (15) percent of the Hire Charge of the returned Goods.

Risk and title (Sale of Goods)

35. Until such time as the Client has made payment in full for the Goods and until such time as the Client has made payment in full of all other money owing by the Client to the Company (whether in respect of money payable under a specific contract or on any other account whatsoever):
- title in the Goods does not pass to the Client;
 - the Client agrees that property and title in the Goods will not pass to the Client and the Company retains the legal and equitable title in the Goods supplied and not yet sold;
 - the Client will hold the Goods in a fiduciary capacity for the Company and agrees to store the Goods in such a manner that it can be identified as the property of the Company, and will not mix the Goods with other similar Goods; and
 - the Client will be entitled to sell the Goods in the ordinary course of its business but will sell as agent and bailee for the Company and the proceeds of sale of the Goods will be held by the Client on trust for the Company absolutely.
36. The Client's indebtedness to the Company, whether in full or in part, will not be discharged by the operation of clause 35(d) hereof unless and until the funds held on trust are remitted to the Company.
37. The Client agrees that whilst property and title in the Goods remains with the Company, the Company has the right, with prior notice to the Client, to enter upon any premises occupied by the Client (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Client) to inspect the Goods of the Company and to repossess the Goods which may be in the Client's possession, custody or control when payment is overdue.
38. The Client will be responsible for the Company's reasonable costs and expenses in exercising its rights under clause 37 where the Client is otherwise in default of the terms of this agreement. Where the Company exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Client against the Company, its employees, agents, or servants.
39. The Client agrees that where the Goods have been retaken into the possession of the Company, the Company has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Client on that Goods, and the Client hereby grants an irrevocable licence to the Company to do all things necessary to sell the Goods bearing the name or trademark of the Client.
40. For the avoidance of doubt, the Company's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Risk and title (Goods supplied on hire)

41. Where Goods are supplied to the Client on hire, the Client acknowledges that the Company owns the Goods and in all circumstances retains all right, title and interest in the Goods (even if the Client goes into liquidation or becomes bankrupt during the Hire Period). The Client's rights to use the Goods are as a bailee only and the Company may retake possession of the Goods at any time upon written notice to the Client where the Client is in breach of these terms and conditions (or any term of the Hire Contract).
42. Risk of damage to or loss of the Goods passes to the Client on delivery in accordance with clause 29 and the Client acknowledges that the Goods shall remain at the sole risk of the Client during the Hire Period and during any further term in which the Client has possession, custody, or control of the Goods (**Risk Period**) until such time as the Goods are repossessed by the Company.
43. The Client must ensure that the Goods are adequately insured on or before delivery for the duration of the Risk Period. The Client must provide the Company with a copy of a certificate of currency upon request.
44. If the Goods are damaged, destroyed, or stolen during the Risk Period due to any fault of the Client, its employees, agents, servants, invitees or any third party, including through failure to comply with these terms and conditions (or any term of the Hire Contract), the Client shall:
- pay to the Company all money past due under the Hire Contract plus the cost of repair and/or replacement of the Goods; and
 - indemnify the Company in respect of any loss and/or damage, including any consequential losses associated with the loss and/or damage of the Goods.
45. Notwithstanding clause 44, if the Goods are damaged, destroyed, or stolen during the Risk Period, the Company is entitled to receive all insurance proceeds payable for the Goods to the extent of the indebtedness of the Client to the Company. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquires.
46. If the Client requests that the Goods be delivered either to an unattended location or left outside, the Client acknowledges that the Company will deliver the Goods as requested at the Client's risk.

Client's obligations

47. The Client warrants and acknowledges that it shall:
- supply, at its own cost, all cranes and hoisting facilities as and when required for the erection, movement and dismantling of the Goods;
 - protect the Goods against acts of theft and vandalism, and store the Goods safely and securely (at its own cost);
 - keep the Goods in its possession, in a suitable place, and not part with possession of any Goods or enter into any sub-lease agreement in respect of the Goods without the Company's prior written consent;
 - not sell, pledge, assign or otherwise deal with the Goods in a manner inconsistent with the Company's rights and interest in the Goods;
 - not remove the Goods from the Site without the Company's prior written consent;
 - not alter, tamper with, modify, repair (or attempt to alter, tamper with, modify or repair) any Goods without the express written consent or prior direction of the Company;
 - not alter, remove, deface, or cover up any label, plates, marks or signs on the Goods, which bear the name of the Company, or any other entity, or any trade marks or trade names used in relation to the Goods;
 - not allow any person to deal with the Goods except for properly trained, licensed (where applicable) and competent personnel, and the Company's employees, agents, and servants, and only strictly in accordance with the law and in line with the Goods' intended purpose;
 - not exceed the recommend or legal load and capacity limits of the Goods;
 - observe guidelines given by the Company and the manufacturer of the Goods;
 - use best endeavours to use the Goods in a manner that will minimise damage to the Goods;
 - comply on time with all of its obligations in connection with the Goods, including statutes and requirements and orders of government authorities;
 - immediately give to the Company any notice or order received from any government authority about the use or condition of the Goods;
 - use best endeavours to ensure that the Goods are not contaminated with any noxious or hazardous substances (including, without limitation, asbestos); and
 - promptly notify the Company in writing of loss of, material damage to, or contamination of the Goods (however so caused) and take all reasonable steps to secure and safeguard the Goods from any potential damage or injury to any person and/or property (including further damage to the Goods).

Site access

48. The Client acknowledges that it shall at all times permit the Company (and its employees, agents, and servants to have free, clear and unrestricted access to the Site to enable the Company to:
- deliver, inspect, service, and/or remove any Goods in accordance with these terms and conditions; and

(b) fulfil its obligations under this agreement (and/or any Hire Contract) without unreasonable interruption, impediment, delay or obstruction.

49. In the event that free, clear and unrestricted access to the Site is not available in accordance with clause 48, the Company reserves the right to cease the provision of Services upon the provision of twenty-four (24) hours' notice to the Client.
50. The Client agrees to indemnify the Company from any and all costs, expenses, and penalties (including claims for liquidated damages) incurred as result of:
- the Company being unable to gain suitable access to the Site; and
 - delays to the Services caused by interrupted and/or unsuitable Site access.

Site damage

51. The Client further acknowledges that the Company, to the fullest extent permitted by law, shall not be liable for any damage caused to the Client's property or to any third party's property (including, without limitation, damage to pathways, driveways, concreted or paved or grassed areas, or foliage), where free, clear and unrestricted access not been permitted in accordance with clause 48.
52. The Client must notify the Company of any damage caused to the Site (or any neighbouring real or personal property) by the Company or its employees, agents or servants within twenty-four (24) hours of becoming aware of the damage. To the extent permitted by law, the Company accepts no liability for any damage when the Company is not notified within this timeframe.

Unsafe conditions

53. The Client acknowledges that the Company may suspend or cease performance of the Services at any time if, in the reasonable opinion of the Company, it would be unsafe to any person or property, or detrimental to the Goods, for the Company to erect, move, or dismantle the Goods.

Security interest

54. The Client hereby consents to the Company recording the details of this agreement (and/or any Hire Contract) on the PPSR (in any manner the Company considers appropriate) and the Client undertakes to do anything that is required by the Company:
- so that the Company can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods;
 - to register a financing statement or financing change statement; and
 - to ensure that the Company's security position, and rights and obligations, are not adversely affected by the PPSA.
55. Unless the Client has obtained the Company's prior written consent, the Client undertakes not to:
- register a financing change statement in respect of a security interest contemplated or constituted by this agreement (and/or any Hire Contract); and
 - create or purport to create any security interest in the Goods, nor 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.
56. The Client:
- waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the agreement (and/or any Hire Contract);
 - agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - agrees that the following provisions of the PPSA will not apply and the Client will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
57. The Client agrees that it will, if requested by the Company, sign any documents, provide any information or do anything else the Company requests, to ensure that any security interest created in the Company's favour by this agreement (and/or any Hire Contract) is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
58. Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
59. The Client irrevocably grants to the Company the right to enter upon the Client's property or premises, with notice, and without being in any way liable to the Client or to any third party, if the Company has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Client shall reasonably indemnify the Company from any claims made by any third party as a result of such exercise.
60. The Client will be responsible for the Company's reasonable costs and expenses in exercising its rights under clause 59 where the Client is otherwise in default of these terms and conditions. Where the Company exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Client against the Company, its employees, agent, or servants.

Charges

61. The Client charges in favour of the Company all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Client owns at present and in the future with the amount of its indebtedness hereunder until discharged.
62. The Client charges in favour of the Company all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Client owns at present and in the future with the amount of its indebtedness hereunder until discharged.
63. As security for the payment of the amount of its indebtedness to the Company from time to time, the Client irrevocably appoints as its duly constituted attorney the Company's company secretary from time to time to execute in the Client's name and as the Client's act and deed any real property mortgage, bill of sale or consent to any caveat the Company may choose to lodge against real property that the Client may own in any Land Titles Office in any state or territory of Australia, even though the Client may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Client (in the event that there is no default by the Client in carrying out its obligations hereunder).
64. Where the Client has previously entered into an agreement with the Company by which the Client has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Client under this agreement. The Company may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

65. The Client acknowledges and agrees that any credit to be provided to the Client by the Company is to be applied wholly or predominantly for commercial purposes.

Cancellation of terms of credit

66. The Company reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
67. Notwithstanding clause 66, if the Client defaults in the payment of any amount due to the Company pursuant to these terms and conditions and does not cure such default within seven (7) days after being given notice of such default, the Company may terminate this agreement (to be effective immediately) upon notice to the Client.
68. Upon the withdrawal of credit in accordance with clause 66, or upon termination of this agreement in accordance with clause 67, all liabilities incurred by the Client become immediately due and payable to the Company.
69. For the avoidance of doubt, termination of this agreement will not affect:

- (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
- (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

Indemnities

70. The Client agrees to indemnify the Company in respect of all liability, claims, damage, loss, costs and expenses (including collection costs, debt recovery fees, and legal costs on the indemnity basis) that the Company may suffer or incur at any time, directly or indirectly, as a result of:
- (a) loss of, or damage to, the Goods by any cause (including lawful confiscation) during the Risk Period;
- (b) damage to property or death of, or injury to, any person caused directly or indirectly by the Goods during the Risk Period;
- (c) any claim against the Company in relation to any incident concerning the Goods or their installation, use or storage where such incident occurs during the Risk Period;
- (d) any other thing in relation to which the Client has assumed the risk or liability under these terms and conditions; or
- (e) any default by the Client in the performance or observance of the Client's obligations under these terms and conditions.
71. The Client's liability to indemnify the Company will be reduced proportionally to the extent only that:
- (a) any negligent act or omission by the Company or a breach of the Company's obligations under these terms and conditions has contributed to the liability, claim, damage, loss, cost or expense which is the subject of the indemnity; or
- (b) this agreement (and/or the Hire Contract) makes the Company specifically liable for any cost or expense or rectifying or repairing any defect in, or damage to, the Goods.
72. The Client's liability to indemnify the Company is a continuing obligation separate and independent from the Client's other obligations and survives termination of this agreement (and/or the Hire Contract).
73. It is not necessary for the Company to incur expense or make any payment before enforcing its rights of indemnity conferred by these terms and conditions.

Provision of further information

74. The Client undertakes to comply with any reasonable written requests by the Company to provide further information for the purpose of assessing the Client's creditworthiness, including an updated credit application.
75. If the Client is a corporation (with the exception of a public listed company), it must advise the Company of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders, the Company may ask for its directors to sign a guarantee and indemnity.

Corporations

76. If the Client is a corporation, the Client warrants that all of its directors have signed this agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with the Company in relation to the Client's obligations to the Company.

Trustee capacity

77. If the Client is the trustee of a trust (whether disclosed to the Company or not), the Client warrants to the Company that:
- (a) the Client enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Client has the right to be indemnified out of trust assets;
- (c) the Client has the power under the trust deed to sign this agreement; and
- (d) the Client will not retire as trustee of the trust or appoint any new or additional trustee without advising the Company and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.
78. The Client must give the Company a copy of the trust deed upon request.

Partnership

79. If the Client enters into this agreement in its capacity as a partnership, the Client warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Company in relation to the Client's obligations to the Company.
80. If the Client is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Company. In the case of a change of partners, the Company may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

81. If the Client becomes insolvent, to the extent permitted by law, the Client remains liable under this agreement (and/or any Hire Contract) for payment of all liabilities incurred. The Client remains liable even if the Company receives a dividend or payment as a result of the Client being insolvent.

Waiver

82. A waiver of any provision or breach of these terms and conditions by the Company must be made by an authorised officer of the Company in writing. A waiver of any provision or breach of these terms and conditions by the Client must be made by the Client's authorised officer in writing.

Costs

83. The Client must pay for its own legal, accounting and business costs and all costs incurred by the Company relating to any default by the Client under these terms and conditions. The Client must also pay for all stamp duty and other taxes payable on this agreement (and/or any Hire Contract) (if any).
84. The Client will pay the Company's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Client, including collection costs, debt recovery fees and legal costs on an indemnity basis.
85. Subject to clauses 86 and 87, payments by, or on behalf of, the Client will be applied by the Company as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 38, 60, 70 and 84.
- (b) Secondly, in payment of any interest incurred in accordance with clause 90.
- (c) Thirdly, in payment of the outstanding invoice(s), or part thereof, in an order determined by the Company in its absolute discretion.
86. To the extent that payments have been allocated to invoices by the Company in its business records, the Company may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Company's absolute discretion, including in a manner inconsistent with clause 85 herein.
87. Payments allocated (and/or reallocated) under clause 85 and/or 86 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Company on the date of receipt of payment.

Taxes and duty

88. The Client must pay GST on any taxable supply made by the Company to the Client under this agreement (and any Hire Contract). The payment of GST is in addition to any other consideration payable by the Client for a taxable supply.
89. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement (or any Hire Contract); or
- (b) 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 Client, then the Client must pay the Company these additional amounts on 48 hours' written demand.

Interest rates

90. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

Set-off

91. All payments required to be made by the Client under this agreement (and/or any Hire Contract) will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Company and the Client in writing or as required by law.
92. 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 Client by the Company.

Limitation of liability

93. In relation to the supply of Goods, to the extent permitted by law, the Company's liability is limited to:
- (a) replacing the Goods or supplying similar Goods;
- (b) repairing the Goods;
- (c) providing the cost for replacing the Goods or for acquiring equivalent Goods; or
- (d) providing the cost for having the Goods repaired.
94. In relation to the supply of Services, to the extent permitted by law, the Company's liability is limited to:
- (a) supplying the Services again; or
- (b) providing for the cost of having the Services supplied again.
95. The Company is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Client as a result of the Goods and/or Services supplied by the Company.
96. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods and/or Services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Subcontracting and assignment

97. The Client acknowledges that the Company reserves the right to subcontract:
- (a) the supply of the Goods to be supplied (or any part thereof); and
- (b) the Services to be supplied (or any part of those Services).
98. Any rights, obligations or benefits created or conferred by this agreement (and/or any Hire Contract) are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.
99. The Client agrees that it will not unreasonably withhold its consent should the Company request to assign rights, obligations or benefits in accordance with clause 98.

Miscellaneous

100. The descriptions, illustrations, specifications and data contained in catalogues, price lists and other written materials do not form part of these terms and conditions or of the description to be applied to the goods.
101. The Company is not liable for any loss caused to the Client by reason of strikes, lockouts, fires, floods, storm or tempest, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, acts of God or any other activity beyond the Company's control.
102. The Client agrees 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 Company by the Client or the Client's authorised representative.

Severance

103. If any provision of this agreement 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.
104. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation of agreement

105. The Client agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Company at any time by written notice to the Client. Subject to clause 106, after fourteen (14) days, or receipt of the written notice of the variation, the variation will be deemed agreed by the Client.
106. If the Client does not agree with the variation proposed by the Company, it must notify the Company in writing within fourteen (14) days from receipt of the written notice that the variation is not agreed to. The Company and/or the Client will then be at liberty to suspend/withdraw credit facilities until such time as agreement is reached between the parties regarding the proposed variations. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Company without notification.
107. Any proposed variation to these terms and conditions by the Client must be requested in writing. The Company may refuse any such request without providing reasons either orally or in writing.
108. Variations requested by the Client will only be binding upon the Company if they are in writing signed by an authorised officer of the Company.

Consent to register

109. The Client hereby consents to the Company recording the details of this agreement (and/or any Hire Contract) on the PPSR and agrees to do all things necessary and reasonably required by the Company to effect such registration.
110. The Client waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.

Jurisdiction

111. The Client acknowledges and agrees that this agreement (and/or any Hire Contract) will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
112. The Client acknowledges and agrees that any contract for the supply of Goods and/or Services between the Company and the Client is formed at the address of the Company.
113. The parties to this agreement (and/or any Hire Contract) 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.

Entire agreement

114. This agreement, together with any Hire Contract, constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Company and the Client in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
115. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original agreement**) between the Client and the Company, these terms and this agreement will constitute a variation of the Original agreement whereby the terms of the Original agreement are deleted and replaced with the terms herein, unless the terms of the Original agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
116. For the avoidance of doubt, the Client understands and agrees that these terms will prevail over, and the Company will not be bound by, any conditions (express or implied) added or provided by the Client, whether included in a purchase order or otherwise, unless otherwise agreed in writing by the Company.

Privacy Act

117. The Client agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

The Client hereby applies for the opening of an account and provides the above information in support thereof.
I am/We are authorised to sign this credit application form on behalf of the Client and the information given is true and correct to the best of my/our knowledge.

Signature		Witness signature	
Name (print)		Witness name (print)	
Position		Date	
Date			

Signature		Witness signature	
Name (print)		Witness name (print)	
Position		Date	
Date			

FOR COMPLETION BY MATT MOLLOY PTY LTD

The Client's credit application is accepted. Signed for and on behalf of the Company.

Signature		Position	
Name (print)		Date	

ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS
(supplier to nominate)

PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988 (Act)*.
- 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.
- 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.
- The Company may collect personal information about the Client and/or Guarantor(s) for the Company'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.
- The Client and/or Guarantor(s) consent to the Company collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- The Company may collect, and may already have collected, Information from the Client and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Company it may restrict or impede upon the Company trading with, extending credit to, continuing to extend credit to or extending further credit to the Client and/or Guarantor(s) or their related bodies corporate.
- The Client and/or Guarantor(s) consent to the Company obtaining and making disclosure of Information about the Client and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Company notifies the Client and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- The Company may provide personal information about the Client and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Company intends to disclose default information to any or all of the credit reporting bodies listed below. The Client and/or Guarantor(s) consent to such disclosure. The Company's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Company may disclose and the Client's and/or Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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- The Company may disclose Information to, and about them and the Client and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Company's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Client and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit. By reason of the Client's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Company's dealing with the Client's and/or Guarantor(s)' Information.
- A full copy of the Company's privacy policy and credit reporting policy can be obtained from the Company's website (details above) or by making a request in writing directed to the Company's privacy officer. The Company'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 Company will deal with any such complaint.
- The Client 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 Company within fourteen (14) days of receipt of this statement that its terms are not accepted, continuing to trade with the Company after receipt of this Statement or, if the Client and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Company after receipt of this statement.

DEED OF GUARANTEE & INDEMNITY

To **Matt Molloy Pty Ltd ACN 137 461 271 and its related bodies corporate** **(Company)**

Name of guarantor		Address	
Name of guarantor		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction

- The Guarantors acknowledge and agree that this guarantee and indemnity is 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

- In consideration of the Company extending or agreeing to extend credit or further credit to the Client at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time or services provided or to be provided, the Guarantors guarantee payment to the Company of all money which is now or at any time in the future becomes due and payable to the Company by the Client 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 Client to the Company arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

- The Guarantors agree to guarantee and indemnify the Company against all losses damages or expenses that the Company may suffer as a result, either directly or indirectly, of any failure by the Client to make due payment of any money owing to the Company whether for goods sold, services provided or otherwise or to observe the terms of any agreement between the Client and the Company, including costs on an indemnity basis of any attempt or attempts to recover from the Client or any Guarantor and whether successful or not or whether frustrated by the Client or Guarantor or by operation of law and including costs ordered by a court to be paid by the Company to the Client 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 Company.
- 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 Company to the credit of any account of the Client or the Guarantors, or deemed to be held on trust by the Client for the Company, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
- 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 Company will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- The Company will have the right to enforce this guarantee and indemnity, irrespective of whether the Company has sought to recover the amounts guaranteed from the Client and with or without notice to the Client, as if the primary liability for any money owing was the Guarantors' own. Further, the Company may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- This guarantee and indemnity will continue in force until such time as the Company releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Client.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Company against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - any other security taken by the Company from the Client or from any other person;
 - any waiver or indulgence, whether as to time or otherwise, given to the Client or to the Guarantors or any one or more of the Guarantors;
 - 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
 - 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

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

Insolvency of Client

- No sum of money which the Client pays to the Company and the Company 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 Client by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966*

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 Client.

Costs

- The Company is at liberty from time to time to charge the account of the Client with all costs, charges and expenses, legal or otherwise that the Company incurs in connection with:
 - the account of the Client;
 - this guarantee and indemnity;
 - any other security in respect of the indebtedness of the Client to the Company;
 - the preparation, completion and stamping of this deed; or
 - the exercise or attempted exercise of any right, power or remedy conferred on the Company under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.
- As security for the payment of the amount of the indebtedness to the Company from time to time, the Guarantors irrevocably appoint as their duly constituted attorney the Company'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 Company 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

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

Severance

- 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

- The Guarantors charge in favour of the Company 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 3 and 4.
- The Guarantors charge in favour of the Company 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 3 and 4.
- This guarantee and indemnity secures the repayment of all monies owed by the Client whatsoever, and this deed constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with the Company 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 Company may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Company constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- 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

- 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 Company by the Guarantors or the Guarantors' authorised representative.

Privacy Act

- The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

Executed as a deed on (date)

Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	

Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	