

SCOMAR DISTRIBUTORS

A DIVISION OF IMTEC AUSTRALIA (1990) PTY LTD (A.B.N. 94 011 010 825)

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**CREDIT ACCOUNT APPLICATION
AND PROVISION OF PERSONAL GUARANTEE & INDEMNITY**

APPLICANT DETAILS:

Item 1:	Applicant's Full Name:		ACN/ARBN:			
	Applicant's Trading Name:		ABN:			
	Address For Accounts:					
	Address For Deliveries:					
Item 2:	Telephone:		Facsimile:			
Item 3:	Nature Of Applicant's Business:					
Item 4:	No. of Years in Business:		No. of Staff:			
Item 5:	Bank:		Branch:			
Item 6:	Monthly Credit Requested:					
Item 7:	Applicant's Business Structure:	Sole Trader Partnership Corporation				
Item 8:	Details of Proprietor, or of Partners or Directors of the Applicant's Business (as applicable):					
	Position:	Surname:	First Name	Date of Birth	Driver's Licence No.	Private Address:
(1)						
(2)						
(3)						
(4)						
Item 9:	Details of Persons authorised to purchase goods on behalf of the Applicant:					
	Position:	Surname:	First Name	Date of Birth	Driver's Licence No.	Private Address:
(1)						
(2)						
(3)						
Item 10:	Trade References - Please supply three (3) trade references where credit has been granted and used for the past six (6) months:					
	Referee Name:		Telephone:		Facsimile:	
(1)						
(2)						
(3)						

Additional Information to be provided by Corporate Applicants Only:

Item 11:	Registered Office:		Date of Incorporation	
Item 12:	Parent Company (if any):			

GUARANTOR DETAILS:

Item 13:	Surname	First Name	Date of Birth	Driver's Licence No.	Telephone	Facsimile	Residential Address:
(1)							
(2)							

The Applicant's Details must be completed. If the Applicant is a corporation or Imtec otherwise requires, the Guarantor's Details must also be completed. Failure to supply any information may be detrimental to this Application. The Applicant and the Guarantor warrant that any information provided is true, accurate and current at the time of application.

1. **Application for Credit Account.** The Applicant requests that Imtec agree to supply Goods to the Applicant on credit. In consideration of Imtec granting the said request, the Applicant acknowledges and agrees that: (a) the supply of any Goods on credit to the Applicant following this application will be subject to these Terms, and (b) these Terms will prevail over and operate to the exclusion of any terms on which the Applicant later submits or purports to submit any purchase order to Imtec. The Guarantor requests that Imtec grant the Applicant's request and in consideration thereof agrees to be bound by the terms and conditions and covenants on the part of the Guarantor set out in these Terms.
2. **Credit.** If the requests in Clause 1 are granted, Imtec will create a credit account in the Applicant's name and set the credit limit for same. The Applicant and the Guarantor agree that Imtec may in its unfettered discretion increase or reduce the credit limit, with or without prior notice to or request from either of them. The Applicant warrants that the persons in Item 9 of the Applicant's Details are authorised to operate the Applicant's account.
3. **Payment Terms.**
 - 3.1 Subject to these Terms, unless otherwise agreed in writing between Imtec and the Applicant, the Applicant must pay for any Goods supplied on credit by Imtec to the Applicant within thirty (30) days from the end of the month in which such Goods are invoiced to the Applicant.
 - 3.2 If the Applicant fails to pay to Imtec any moneys payable by the Applicant hereunder by the due date for the payment thereof, then from the due date for payment thereof until the same shall be actually paid the Applicant shall pay interest thereon at the rate of one and a half percentum (1.5%) for each month or part of a month that such payment remains overdue.
4. **Retention of Title.**
 - 4.1 Title to any Goods supplied by Imtec to the Applicant shall not pass to the Applicant unless and until Imtec has received in full all moneys payable by the Applicant to Imtec on any basis whatsoever. Imtec shall be deemed not to have received any moneys that are repaid or become payable or repayable by Imtec for any reason whatsoever to any personal representative, trustee in bankruptcy, receiver to or liquidator of the Applicant, as the case may be.
 - 4.2 Notwithstanding Imtec's retention of title to any Goods as aforesaid, the said Goods will be at the Applicant's risk once delivered to the Applicant. Upon such delivery, the Applicant shall take custody of the Goods and retain them as Imtec's fiduciary agent and bailee. The Applicant may resell any Goods so delivered, but only as Imtec's fiduciary agent, provided always that: (a) the Applicant shall have no authority whatsoever to bind Imtec to any liability to any third party; (b) any resale shall be at arms length and on market terms; (c) pending resale, or utilisation in any manufacturing or construction process of the Applicant or of any third party, such Goods shall be kept separate from Goods owned by the Applicant, and shall be properly stored, protected and insured; (d) any proceeds received by the Applicant upon any resale or utilisation as aforesaid shall be held by the Applicant in trust for Imtec but only to the extent that such proceeds are less than or equal to the total amount owing by the Applicant to Imtec at the time the Applicant receives such proceeds or any part thereof; and (e) moneys held by the Applicant on trust for Imtec as aforesaid shall be kept by the Applicant in a separate account until paid to Imtec.
 - 4.3 For the purpose of enforcing its retention of title aforesaid, Imtec may enter upon any premises where any Goods are situated and remove same, with reasonable force if necessary. Imtec its attorneys servants and agents shall not be liable for any damage or injury occasioned to any premises or to any person in the course of exercising its rights hereunder.
5. **Default.** Without limiting the circumstances in which a default may be made hereunder, a default shall be deemed to have been made by the Applicant in any of the following circumstances:
 - (a) The Applicant: (i) fails to pay to Imtec any moneys payable by the Applicant to Imtec hereunder by the due date for the payment thereof, whether or not any formal demand therefor has been made; (ii) fails to observe, perform or fulfil any other term, covenant, condition or restriction on the part of the Applicant hereunder (whether positive or negative); (iii) being a company, the Applicant enters into liquidation or a receiver or official manager or provisional liquidator is appointed thereto; (iv) being a natural person, the Applicant commits any act of bankruptcy or has a Bankruptcy Petition presented against him or shall enter into any personal insolvency agreement; or (v) being a partnership, paragraph 5(a)(iii) or 5(a)(iv) hereof applies to any of the partners in the Applicant; or
 - (b) Any change occurs in the circumstances of the Applicant or any Guarantor or of any company associated or related to either of them that in the unfettered opinion of Imtec adversely affects or is likely to affect the ability of the Applicant or any Guarantor to perform any of their obligations hereunder.
6. **Indemnities.** The Applicant hereby indemnifies Imtec in respect of: (a) any and all liabilities, actions, suits claims, demands, causes of action, whether legal equitable or otherwise and whether in favour of the Applicant or any other person, and all costs (including legal costs on a full indemnity basis) and expenses incurred or payable by Imtec in relation to same, which arises out of or relates to Imtec's exercise of any of its rights herein; and (b) in respect of all costs (including legal costs on a full indemnity basis) and expenses incurred by Imtec in enforcing any provision of these Terms, whether before during or after any legal proceeding.
7. **Imtec's Rights.** If a default has occurred hereunder, then notwithstanding anything herein to the contrary and without prejudicing any other right Imtec may have in consequence thereof, at Imtec's option Imtec may: (i) recover as a liquidated debt all amounts then invoiced or to be invoiced for goods delivered to the Applicant but not yet paid; and/or (ii) refuse or suspend supply to the Applicant whether on credit or otherwise.
8. **Time Bar.** Any objection to the quantity, merchantable quality, fitness for purpose, correspondence with description or correspondence with sample of any Goods delivered by or on behalf of Imtec to the Applicant must be notified in writing by the Applicant to Imtec within seven (7) days of delivery, failing which such goods shall be deemed to be: (a) reasonably fit for their purpose, or for any specific purpose previously communicated to Imtec; (b) of sound and merchantable quality; (c) without defect; (d) correct in quantity; and (e) consistent with any sample or description by reference to which they were sold.
9. **General.**
 - 9.1 Imtec's waiver of a default hereunder or of any right, power, authority, discretion or remedy arising upon such default must be in writing and signed by Imtec. Any such waiver shall not in any circumstances be construed or operate as a licence to the Applicant to repeat or continue any default, or as a waiver of any subsequent default whether of the like nature or not. This clause is solely for Imtec's benefit.
 - 9.2 Time is of the essence of these Terms.
 - 9.3 The Applicant will pay all stamp duty and other charges or taxes payable in respect of this Application.
 - 9.4 Imtec may in its unfettered discretion appropriate any payment received from the Applicant to such Goods and accounts as it thinks fit notwithstanding any appropriation by the Applicant to the contrary.

The Applicant confirms that it has read and understood and agrees to be bound by the above Terms of Credit. The Applicant is advised to seek legal advice before signing.

Signed for and on behalf of the Applicant this _____ day of _____ 20____.

Sole-Trader/Partner/Director: _____

Full Name of Signatory: _____

Position (eg "Partner", "Director") _____

Witness Signature: _____

Full Name of Witness: _____

Terms of Credit

- 9.5 Imtec is authorised to complete any blanks in this document.
- 9.6 Unless proved otherwise, Imtec's certificate shall be conclusive evidence of any facts to which it relates.
- 9.7 These Terms shall be construed in accordance with the laws of the State of Queensland. The Applicant submits to the non-exclusive jurisdiction of the courts of Queensland.
- 9.8 If anything in these Terms is unenforceable, illegal or void, then it is severed and the rest of these Terms shall remain in force.
10. **Guarantee and Indemnity, and Credit Reporting (Guarantor)**
 - 10.1 The Guarantor hereby guarantees to Imtec the due performance and observance by the Applicant of all the Applicant's obligations and liabilities hereunder, including but not limited to the payment of all moneys that the Applicant becomes actually or contingently liable to pay to Imtec hereunder. The Guarantor indemnifies Imtec against any loss, costs (including legal costs on a full indemnity basis), damages, claims or expenses incurred or suffered by Imtec as a result of or in connection with the grant of credit, or the supply of any Goods, to the Applicant, or in relation to the enforcement by Imtec of any provision of this Guarantee and Indemnity.
 - 10.2 This Guarantee and Indemnity is given as a Deed. Clauses 3.2, 6, 9 and 12 of these Terms are incorporated into this Guarantee and Indemnity, *mutatis mutandis*, and, save in respect of Clause 12, shall be construed as though: (a) the references therein to the Applicant were references to the Guarantor, and (b) references therein to the "Terms" or "this Application" were references to the Guarantee and Indemnity contained in this Clause 10.
 - 10.3 This Guarantee and Indemnity is a continuing guarantee and indemnity so long as any moneys remain due and owing by the Applicant to Imtec on any basis whatsoever. The Guarantor waives all rights as surety and agrees that Imtec may act as though the Guarantor were the principal debtor. Without limiting the generality of the foregoing, the Guarantor's obligations hereunder are not affected by anything that would otherwise affect them under the law relating to sureties including: (a) the death, mental or physical disability, legal incapacity or insolvency of the Applicant or the Guarantor, or (b) the fact that Imtec varies, assigns, ends or replaces the Terms.
 - 10.4 Pursuant to s18K(1)(c) of the Act, for the purposes of assessing whether to accept the guarantee granted by the Guarantor herein, the Guarantor consents to Imtec obtaining from any credit reporting agency personal information regarding the Guarantor (including information as to commercial credit worthiness). This consent commences from the date hereof and continues for the duration of this Guarantee and Indemnity.
11. **Credit Reporting (Applicant)**
 - 11.1 Pursuant to s18E(8)(c) of, and subject to, the Act, the Applicant acknowledges and agrees that before, during or after the provision of credit or commercial credit to the Applicant, Imtec may disclose information collected in the course of this Application to a credit reporting agency for the purpose of obtaining a credit report about the Applicant and/or allowing the credit reporting agency to create or maintain a credit information file containing information about the Applicant. Pursuant to s18E(1) and the Privacy Commissioner's determination under s18E(3) of the Act, information which may be disclosed includes identity particulars and the fact that the Applicant has applied for credit and the amount; Imtec is a credit provider to the Applicant; payments have become overdue for more than 60 days for which recovery proceedings have been commenced; payments are no longer overdue; cheques drawn upon the Applicant have been dishonoured more than once; and in Imtec's opinion the Applicant has committed a serious credit infringement. Pursuant to ss18K(1)(a) and 18K(1)(b) of the Act, to enable Imtec to assess the Applicant's application for credit or commercial credit hereunder, the Applicant authorises Imtec to obtain a credit report containing personal information from the Applicant's credit information file from a credit reporting agency, and, for the purposes of s18L(4) of the Act, to obtain information concerning the Applicant's commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of persons. Pursuant to ss18N(1)(bg) and 18N(1)(bh) of the Act, the Applicant authorises Imtec to disclose any report or personal information relating to the Applicant in Imtec's possession or control to a person who is currently a guarantor, or whom the Applicant indicates or has indicated is considering becoming a guarantor in respect of its obligations hereunder, for the purposes of enabling any prospective guarantor to decide whether or not to act as a guarantor, or for the purposes of keeping any guarantor, from time to time, informed about the guarantee. For the purposes of s18N(1)(b) of the Act, the Applicant authorises Imtec to give to and obtain from credit providers named in this Application or in any credit report issued by a credit agency relating to the Applicant or to any other credit provider to the Applicant, information about the Applicant's credit arrangements. Such information may be used for assessing an application by the Applicant for credit; assisting the Applicant to avoid defaulting on its credit obligations; notifying credit providers of a default by the Applicant; and/or assessing the Applicant's credit worthiness.
 - 11.2 For the purposes of this Clause 11: (a) the Applicant acknowledges that information which may be given to any current or prospective guarantor or to any other credit provider includes any information about the Applicant's credit worthiness, credit standing, credit history or credit capacity; and (b) words and phrases not defined in these Terms but which are defined in the Act have the meanings attributed to them by the Act.
 - 11.3 Subject to the Act, the Applicant irrevocably authorises and directs the Bank identified in Item 5 to disclose to Imtec such information as Imtec requires in assessing the Applicant's application herein, including but not limited to information regarding the Applicant's account, account history, or commercial credit worthiness.
12. **Definitions and Interpretation**
 - 12.1 Unless the context otherwise requires, in these Terms the following words shall have the meanings ascribed to them: "Applicant" means the person described as such in Item 1 in the Applicant Details; "Applicant's Details" means the details set out in Items 1 to 12 inclusive on the first page hereof; "Guarantor" means the person or persons (if any) identified as such in Item 13 in the Guarantor Details; "Guarantor's Details" means the details set out in Item 13 (if any) on the first page hereof; "Goods" means such goods as are sold by Imtec from time to time in the course of its business; "Terms" means these Terms of Credit and includes the Guarantee and Indemnity in Clause 10 hereof.
 - 12.2 Unless the context otherwise requires, in the interpretation of these Terms: (a) Any reference to "Imtec" is a reference to Imtec Australia (1990) Pty Ltd (ACN 011010825); (b) Any word importing the singular includes the plural and vice versa; (c) Any word importing one gender includes the other genders; (d) Any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, governmental authority, state or agency of a state or any association or partnership (whether or not having corporate legal personality) or any two or more of the above; (e) Any reference to a statute includes all statutory provisions consolidating, amending or replacing the statute referred to and all regulations, rules, by-laws, proclamations, orders and other authorities pursuant to the statute; (f) Any reference to a clause, sub-clause, paragraph or Schedule refers to a clause, sub-clause, paragraph or Schedule to or of these Terms; (g) Any heading used in these Terms is used for convenience only and shall not be used in the interpretation of these Terms; (h) The rule of construction known as *contra proferentum* shall not apply, and any ambiguity in the Terms shall be construed in Imtec's favour; (i) Where a party hereunder is comprised of two or more persons, the terms, covenants, conditions, provisos, stipulations and restrictions herein contained shall bind each of those persons jointly and severally; Any reference to "the Act" means the Privacy Act 1988 (Cth).
 - 12.3 Unless otherwise agreed in writing between the parties with specific reference to this Clause, these Terms constitute the entire agreement between the Applicant, the Guarantor (if any) and Imtec, and supersedes all prior arrangements or representations, whether written or oral, and other documents issued or entered into prior to the date hereof, and the Applicant and the Guarantor (if any) hereby waive any legal or equitable estoppel against Imtec to the contrary.

The Guarantor confirms that it has read and understood the above Terms of Credit and agrees to be bound by the Guarantee and Indemnity therein contained. The Guarantor is advised to seek legal advice before signing.

Signed Sealed and Delivered by the Guarantor this _____ day of _____ 20____.

Guarantor's Signature: _____

Full Name of Guarantor: _____

Witness Signature: _____

Full Name of Witness: _____

Secretary/Director: _____

Full Name of Signatory: _____

Position (ie "Director" or "Secretary") _____

Witness Signature: _____

Full Name of Witness: _____

Guarantor's Signature: _____

Full Name of Guarantor: _____

Witness Signature: _____

Full Name of Witness: _____