

markair components pty ltd

Application for a Commercial Credit Account with Markair Components

Markair Components Pty Ltd (ACN 005 217 783) (“we”, “us”, “our”, “Markair Components”)

Company applying for Credit _____ (“you”),

A.B.N.(_____)

The applicant(s) apply to Markair Components for credit on the terms and conditions set out below (“**Application for Credit**”).

1. You warrant that all information given to us is true and correct.
2. You agree that our attached trading terms and conditions (“**Trading Terms**”) apply to all purchases of goods and services that we may provide you.
3. You acknowledge that we may :
 - (a) refuse your application for credit facilities;
 - (b) withdraw or vary credit facilities or otherwise at our absolute discretion without prior notice;
 - (c) withhold supply irrespective of whether an order has been accepted or not if for any reason we determine in our absolute discretion that no further credit is to be extended to you.
4. You consent and agree that we may :
 - (a) Give to a credit reporting agency personal information in relation to your application for credit;
 - (b) Obtain from a credit reporting agency a credit report containing personal information about you in order to assess your application for commercial credit;
 - (c) Give to and seek from the credit providers named in this Application or credit providers named in the credit report information about the your credit arrangements including your credit worthiness, credit standing, credit history, credit capacity or the information otherwise permissible under the privacy act of 1998, for the following purposes:-
 - o To asses this application by you for credit
 - o To notify other credit providers of default by you;
 - o To exchange information with other credit providers as to the status of your payment under this Agreement where the company is in default with other credit providers;
 - o To assess your credit worthiness.
5. You agree that the provisions in clause 4 above remain in effect whilst we provide credit to you.
6. The signatory warrants that where there is more than one applicant, or the applicant is a company that they are authorised to sign on behalf of all applicants or the company as appropriate.

PART A (Please complete all forms))

BUSINESS DETAILS

Type of Business: Company / Sole Trader/ Partnership/ Trustee (please circle appropriate)

Name _____

A.B.N.: _____

Full Trading Name _____

Registered Office Address _____

Full trading Address _____

Address for Invoicing _____

Account Contact _____ Business Phone _____

FAX: _____ Email: _____

DIRECTOR DETAILS

Full Name and Private Address of Directors/ Proprietors/Owners:

1. _____ Licence No: _____ DOB: _____

Private Address _____ Postcode _____

2. _____ Licence No: _____ DOB: _____

Private Address _____ Postcode _____

3. _____ Licence No: _____ DOB: _____

Private Address _____ Postcode _____

PART B – GENERAL INFORMATION

Period of current ownership of business/company: Years _____ Months _____

CREDIT REFERENCES (Major Suppliers)

1. _____ Phone _____ Fax _____

2. _____ Phone _____ Fax _____

3. _____ Phone _____ Fax _____

BANK

ADDRESS

BSB

ACCOUNT NO.

DECLARATION

The Applicants request you to open an account on the basis of your standard Trading Terms and they agree to be bound by such terms and conditions. You/Applicants acknowledge that the information provided in the Application is true and correct and has been relied upon by us to determine whether to grant the Applicants credit.

Applicants Signature

Title

Date

OFFICE USE ONLY

Credit Manager's comments: _____

Credit Limit _____

Approved: _____ Date: _____ Account: _____

PERSONAL GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the person(s) named in the Schedule as the **GUARANTORS** (the “Guarantors”, each a “Guarantor”) in favour of **MARKAIR COMPONENTS PTY LTD** (“Markair Components”)

INTRODUCTION

- A The Guarantors have asked Markair Components to supply goods and/or services (**‘the Supplies’**) to the person named in the Schedule (**“the Client”**) and to extend (or continue to extend) credit to the Client.
- B Markair Components has agreed to the request of the Guarantors in consideration of their agreement as follows.

IT IS AGREED:

- 1. The Guarantors guarantee to Markair Components the punctual payment of the monetary liabilities of the Client (on any account and in any capacity whatsoever and including liabilities in respect of the Supplies) which are now owing, or may from time to time be owing by the Client to Markair Components (**“the Debt”**).
- 2. The Guarantors acknowledge and agree that the Debt includes any legal and other costs and expenses incurred by Markair Components in seeking payment from the Client or in enforcing this Guarantee and Indemnity against the Guarantors.
- 3. The Guarantors jointly and severally undertake, if the Client fails to pay any part of the Debt when the same is due and payable, to pay the full amount of the Debt on demand by Markair Components and to keep Markair Components indemnified against any loss in relation to the Debt and by way of further security hereby charges in favour of Markair Components with payment of the Debt all of our estate and interest in any land in which we now or might subsequently acquire a legal or beneficial interest and agree, upon request, to execute a registerable instrument charging such estate or interest in favour of Markair Components.
- 4. The obligations of the Guarantors under this Guarantee and Indemnity are principal obligations and are not affected by :
 - a. any variation which may be agreed by Markair Components and the Client in respect of the terms on which the Supplies are supplied and paid for;
 - b. any waiver, extension of time or indulgence given by Markair Components to the Client;
 - c. any right or claim which the Client may assert to resist making payment of any part of the Debt;
 - d. any increase in the amount of the Debt; or
 - e. any other act, omission, matter or thing whatsoever.
- 5. This Guarantee and Indemnity in a continuing obligation of each Guarantor for the amount of the Debt which may be owing from time to time and, binds the successors and assigns of the Guarantors and will not be affected by :
 - a. the death, incapacity, bankruptcy, of a Guarantor or the Client;
 - b. a Guarantor or the Client which is a body corporate becoming an externally administered body corporate pursuant to the Corporations Law; or
 - c. any right on any account whatsoever which any Guarantor may have or acquire against the Client, which the Guarantor agrees not to enforce until the Debt has been discharged in full.
- 6. If the obligation of any Guarantor in respect of any part of the Debt is unenforceable, that Guarantor’s obligations in respect of the balance of the Debt will not be affected by such unenforceability.

Signature _____
Date _____

7. If any payment or other transaction relating to or affecting the Debt is :
 - a. void, voidable or unenforceable in part or in whole; or
 - b. is claimed to be void, voidable or unenforceable and that claims is upheld, conceded or compromised in whole or in part;
 - c. the liability of each of the Guarantors is the same as if :
 - d. that payment or transaction (or the void, voidable or unenforceable part of it); and
 - e. any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above; had not been made and the Guarantors must immediately take all action and sign all documents necessary or required by Markair Components to pay to or restore to Markair Components the Debt in full.
8. If all or any of the Debt is:
 - a. not recoverable from the Client; or
 - b. not recoverable from the Guarantors under this Guarantee and Indemnity; each of the Guarantors, as a separate and principal obligation, indemnifies Markair Components against any loss, liability, expense or outgoing suffered, paid or incurred by Markair Components in relation to such amounts and must pay Markair Components an amount equal to such amounts.
9. This Guarantee and Indemnity binds each of the signatories below as Guarantors notwithstanding that one or more of the persons named below may never execute this document.
10. For the avoidance of doubt it is expressly acknowledged by the Guarantors that the Guarantors' obligations extend to and may include debts and other obligations of the Client which have arisen before the date of this Guarantee.
11. Each of the Guarantors :
 - a. consents to Markair Components obtaining from credit reporting agencies, credit reports containing personal credit information for the purpose of assessing whether to accept each Guarantor as a guarantor for the obligations of the Client;
 - b. consents to Markair Components obtaining instructions from time to time for the purpose of renewing and assessing the Guarantor's commercial credit worthiness;
 - c. consents to Markair Components providing to credit reporting agencies and credit providers other than Markair Components personal credit information relating to each of the Guarantors; and
 - d. acknowledges that if Markair Components agrees to extend credit to the Client, the consents contained in this clause remain in force so long as this Guarantee and Indemnity remains in force.
12. Each of the Guarantors acknowledges having read the terms of this Guarantee and Indemnity and having been:
 - a. advised to; and
 - b. given the opportunity to, seek independent legal advice prior to execution.

Signature _____
Date _____

GUARANTEE AND INDEMNITY – SCHEDULE
IMPORTANT: MINIMUM OF TWO (2) APPLICANTS / DIRECTORS TO SIGN AS GUARANTORS
(COMPANY / TRUST TO COMPLETE GUARANTEE)

GUARANTORS (Insert full names and addresses):

1	2	3

CLIENT: (Insert full name and address including A.B.N. if a company)

SIGNED the _____ day of _____ Year

SIGNED by Guarantor (1)

In the presence of:

Address of Witness

Signature of Witness

Name of Witness

SIGNED by Guarantor (2)

In the presence of:

Address of Witness

Signature of Witness

Name of Witness

SIGNED by Guarantor (3)

In the presence of:

Address of Witness

Signature of Witness

Name of Witness

markair components pty ltd

trading terms

1. DEFINITIONS

“**Application for Credit**” means the signed application giving Markair Components the right to assess the credit worthiness of the Client.

“**Goods, the goods**” has the meaning given to it in clause 3.

“**GST**” means the tax payable on Taxable Supplies under the GST Legislation.

“**GST Legislation**” means the “A New Tax System (Goods and Services Tax) Act 1999” and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

“**Markair Components**” (“**us**”, “**we**”) means Markair Components Pty Ltd (ACN 005 217 783).

“**Client**”, “**you**” means the buyer of goods and services from Markair Components and who has accepted these Trading Terms and who Markair Components has offered credit to.

“**Taxable Supply**” has the meaning given to it in the GST Legislation.

“**Trading Terms**” means these terms and conditions governing the sale of goods and services to the Client. If there are any inconsistencies between the Application for Credit and these Trading Terms, then these Trading Terms will prevail.

2. SUPPLY ON CREDIT

Terms and conditions on which a credit account may be granted and operated are subject to change without notice.

Markair Components agrees to supply Goods and services to you on a credit basis within any credit terms approved from Markair Components from time to time.

Markair Components shall have the sole right and discretion to establish credit limits for you and any such limits may be modified or terminated without notice in whole or in part by Markair Components from time to time in its sole and unilateral discretion with respect to all orders not accepted as of the date of such modification or termination. Any modification or terminations of previously established credit limits for you shall be applicable to all orders accepted by Markair Components on or after the date of such modification or termination and until such time as further modification may be effected.

3. RESERVATION OF TITLE

You acknowledge that the title of goods by delivered by Markair Components to the Client (“**the goods**”) is only transferred to you once all sums owing to Markair Components on any account whatsoever have been paid. Until all such sums have been paid, Markair Components has the right to call for the recover the goods. (For which purpose employees or agents may enter your premises) and you are obliged to deliver up the goods if so directed by Markair Components.

You agree to keep the goods and any proceeds of sale of the goods in a fiduciary capacity for Markair Components until such time as title is transferred to you.

Notwithstanding the foregoing you may sell the goods to a third party in the ordinary course of business.

Notwithstanding the previous three provisions you accept all risk of loss and damage to the goods, whether caused by you or not following delivery or dispatch of the goods to you.

4. FREIGHT

All deliveries will incur a freight charge.

5. ORDERS & DELIVERY

All orders must be in a form approved by Markair Components and are subject to acceptance by Markair Components.

All orders are subject to these Trading Terms. In the event of any inconsistency between the order and the Trading Term, the Trading Terms will apply.

If Markair Components's ability to fulfil an accepted order is affected by circumstance or event beyond its control we may:

- a. extend the date for delivery;
- b. with your approval, alter the specifications for the goods to allow the substitution of equivalent goods; or
- c. cancel the order without liability for the breach.

You agree to accept delivery by Markair Components by instalments if required to do so by Markair Components.

Unless otherwise stated in the quotation any times quoted for delivery are estimates only. If a delivery date is specified by you, Markair Components will in no circumstance be liable for any loss or damage of any kind whatsoever suffered or incurred by you as a consequence of part, or late delivery. Any delays in delivery will not constitute grounds for cancellation of the subject order or any other order by you.

Risk of damage to, or loss of, or deterioration of, the goods passes to you upon delivery (including all risks associated with unloading), or after 7 days from the date of notification by Markair Components to you that the goods are ready for collection ("the Notice Expiry Date"), or upon title in the Goods passing to you.

6. PAYMENTS & CHARGES

Prices listed on the quote are valid for 30 days from the date of the quote.

All charges are in Australia dollars and unless otherwise specified prices are exclusive of tax.

All prices are exclusive of GST unless expressly stated to the contrary.

You agree to make all payments within **30** days of the invoice date.

If you fail to comply with the payment obligations without prejudice to the other rights of Markair Components, Markair Components may:

- a. charge interest on the overdue amount at the rate of 12% pa calculated from the date payment was due to the date of full and final payment;
- b. charge for all costs and expenses incurred by Markair Components in connection with recovery of the outstanding monies including collection cost, legal expenses and any other related costs.
- c. thereafter require you to pay cash on delivery for any further orders placed by you for goods and services;
- d. refuse to accept orders from and stop deliveries to you;
- e. require the immediate payment of all monies owed by you to Markair Components;
- f. claim the return of any Goods in your possession where title has not passed to you; and/or
- g. without notice to you withdraw or vary any credit Markair Components has provided to you.

7. CONFIDENTIAL INFORMATION

Both parties agree to hold in confidence any information provided to it which:

- a. Is confidential and clearly so identified; and
- b. Involves the other parties business plans or financial and personnel affairs.

8. CLAIMS

Markair Components will pass through the manufacturers warranty for all products supplied. If you have a warranty claim or require maintenance on the goods, the following process will apply:

- a. Return of stock will not be accepted without prior authorisation.
- b. Claims will only be considered if received to our warehouse within 7 days of receipt of goods by you.
- c. Return of first quality stock - Stock must be in original packaging, in good order and condition and be accompanied by documentation showing: Client name, address and account number; Markair Components invoice number; reasons for return and authorisation reference number. Returns of unpackaged stock will not be accepted.
- d. Return of faulty stock.
 - (i) Any claims for faulty stock must be fully documented and referred to your local Markair Components representative.
 - (ii) All items will be subject to inspection before credit can be considered and accordingly acceptance of the goods by Markair Components shall not constitute acceptance of credits.
- e. Claims that are accepted by Markair Components will be credited at the invoice price;
- f. All freight charges are your responsibility; and
- g. Return of goods to Markair Components by you may only be made if we have agreed to that return and all such returns maybe subject to a 15% handling charge if the reason for returning the goods has been caused by you. The freight costs and risk remains the responsibility of you. Markair Components will endeavour to rectify any shortages as soon as practicable after receiving notice but Markair Components will not suffer any liability from or in respect of such shortage or its rectification.

9. LIABILITY

We will not be liable for any loss of income, loss of profits, loss of data or for any indirect or consequential loss or damage even if informed of their possibility.

Our maximum aggregate liability for the Services supplied to you whether in contract, tort (including negligence) or otherwise shall not exceed the amount payable by you to us in respect of each purchase order.

You will be in default if:

- a. you breach the Trading Terms or Application for Credit terms;
- b. payment for the Goods have not been received by Markair Components by the due date of the payment;
- c. you become insolvent;
- d. in our opinion your credit worthiness or credit standing has adversely altered from that indicated in its Application for Credit.

If you default we may, without limiting Markair Components' legal rights, Markair Components reserves the right, in its absolute discretion, to take any of the following actions against you:

- e. treat the whole of the Trading Terms and any other contract with you as repudiated and sue for breach of contract; and/or
- f. refuse to supply any Goods to you; and/or
- g. claim the return of any Goods in your possession where title has not passed to you; and/or
- h. without notice to you withdraw or vary any credit Markair Components has provided to you; and/or
- i. without notice to you make all monies owing by you (including costs) to Markair Components on any account immediately due and payable; and/or
- j. without notice to you charge you

10. VARIATION & NOTICES

Notices must be in writing and served either personally, sent by prepaid post or emailed from the respective party.

Markair Components may change these Terms and Condition at any time by writing to you. At least twenty one days notice of such change shall be given.

11. TERMINATION

Termination for Convenience - This Agreement can be terminated by 30 days written notice by either party. On the termination date:

- a. all purchase orders will terminated;
- b. we will raise any outstanding invoices for any supplied Goods or services; and
- c. You will pay the outstanding invoices in accordance with the above payment obligations. All guarantees given are not revoked until all outstanding indebtedness is paid in full.

12. WAIVER

The failure of Markair Components at any time to require performance by you of any provision of these Trading Terms shall not affect in any way the full rights of Markair Components to require such performance at any time thereafter nor shall the waiver by Markair Components of a breach of any provision hereof be deemed a waiver of the provision itself or any other provision hereof.

13. GST

Where Markair Components makes a Taxable Supply to the Client under or in connection with these Trading Terms or in connection with any matter or thing occurring under these Trading Terms and the consideration otherwise payable for the Taxable Supply does not include GST, Markair Components will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Client the amount of any GST on the Taxable Supply.

14. INSOLVENCY

If you become bankrupt or make any arrangement with or assignments for the benefit of its creditors, or being a company, becomes the subject of any proceedings for or makes arrangements or composition with the creditors, or if a receiver, or receiver the manager, administrator or liquidation is appointed to the you, or in respect of any of its assets, then, in addition to any other rights which Markair Components may have either by virtue of the foregoing Agreement. Markair Components will stop all credit functions and full payment of the account is required within two (2) days.

15. ASSIGNMENT

Neither party may assign, transfer, charge or otherwise seek to deal in any of its respective rights or obligations under this Agreement without the prior written consent of the other party which will not be unreasonably withheld.

You agree to notify us within seven (7) days of any change affecting your legal entity, structure, management, or control.

16. SEVERANCE

Should any provisions of these trading terms of the application hereof be held invalid or enforceable by a court of competent jurisdiction the remainder of these trading terms and the application hereof other than those provisions or parts thereof as to which it shall be held invalid or unenforceable shall not be affected thereby and shall continue valid and enforceable to the fullest extent permitted by law or equity

17. GOVERNING LAW

This Agreement will shall be governed by the law of the State of Victoria Australia and the parties submit to the exclusive jurisdiction of the Court of that State.

AUTHORISATION

Client: _____

Company A.B.N.: _____

**Authorised
Representative:** _____

Title: _____

Signature: _____

Date: _____