

# Commercial Credit Application Form



For the benefit of

(referred to hereafter as ASKIN)

## Customer Details

<b>Type of Customer:</b>	<input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Government		
<b>Legal Name of Customer:</b> (Company Name/Partnership/ Sole Trader/Trustee)			
<b>Trading Name/Business Name:</b>			
<b>Company and Business Numbers:</b>	<b>ACN:</b>	<b>ABN:</b>	
<b>Trust Name and ABN: (if a Trust)</b>	<b>ABN:</b>		
<b>If the Customer is a Trust, specify type of Trust</b>	<input type="checkbox"/> Discretionary Trust <input type="checkbox"/> Family Trust <input type="checkbox"/> Unit Trust <input type="checkbox"/> Other, please specify:		
<b>If Customer is a Trust, please provide:</b>	<input type="checkbox"/> Copy of Trust Deed <input type="checkbox"/> Profit & Loss Statement and Balance Sheet for the last 2 years		
<b>Customer Business Type:</b> (e.g. government, head contractor, subcontractor, supplier)			
<b>Principal Place of Business:</b> (Not a PO Box)	<b>Address:</b>		
	<input type="checkbox"/> Owned <input type="checkbox"/> Leased/Rented		Years at Address:
	Name of Landlord:		Landlord Tel:
<b>Registered Business Address:</b>			
<b>Address for Notices/Deliveries:</b>			
<b>Tel:</b>	<b>Fax:</b>	<b>Mob:</b>	
<b>Email for Invoices/Statements/Delivery Dockets:</b>			
<b>Customer's Accountant Name:</b>			
<b>Date Business Commenced Operating:</b>			
<b>Name of Bank:</b>		<b>BSB:</b>	
<b>Branch:</b>		<b>Acc No:</b>	

## Other Details

<b>Names of Directors/Partners/ Sole Trader/Trustee: (max 2)</b>		
<b>Private Residential Address of Directors/Partners/ Sole Trader/Trustee:</b>		
<b>Residence Owned:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Mobile Phone No(s):</b>		
<b>Drivers Licence No(s):</b>		
<b>Date(s) of Birth</b>		
<b>Had a previous account with ASKIN?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If yes, please provide details:</b>		

# Commercial Credit Application Form



## Trade References

Please provide details for three (3) referees from whom you are currently buying on an account basis (i.e. not COD).

Detail	Ref 1	Ref 2	Ref 3
Name of Referee:			
Employer of Referee:			
Customer Ref No:			
Telephone No:			
Email:			

The Customer hereby applies for the opening of an account for supply on credit on the Terms and Conditions provided herein and presents the above information in support. The Customer understands and agrees that:

- a. the documents that form this application and agreement between the Customer and ASKIN are the Commercial Credit Application Form, Deed of Guarantee, ASKIN's Terms and Conditions of Supply and ASKIN's Privacy Act Authority; and
- b. the credit facility may be granted, removed, reviewed, extended and reduced by ASKIN in its absolute discretion.

I am authorised to sign this credit application form on behalf of the Customer and warrant the information supplied is true and correct to the best of my knowledge and the Customer agrees to all terms and conditions contained in this application.

### Signed by the Customer

In the presence of:

Signature:

Witness Signature:

Name (Print):

Witness Name:

Position:

Address:

Date:

Date:

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## For Completion by ASKIN

Company/Business name search completed by:

Date:

Credit Application approved by:

Date:

Credit Limit: \$

Revised Limit: \$

Date:

Account approved for cash on delivery  
(Supplier to nominate)

7 days

14 days

30 days

# Deed of Guarantee & Indemnity



In favour of:

The ASKIN entity set out in the Commercial Credit Application completed with this Deed (referred to hereafter as **ASKIN** or **Supplier**)

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

(jointly and severally the **Guarantor**)

In consideration of ASKIN agreeing, at the Customer's request, to extend credit to the Customer and supply goods in the way of the trade and business carried on by ASKIN, the undersigned Guarantor agree as follows:

1. To guarantee and to be answerable and responsible upon demand by ASKIN for:
  - a. the due and punctual payment by the Customer of all moneys payable to ASKIN from time to time on any account or accounts now existing or that may in the future be opened between ASKIN and the Customer; and
  - b. the due and punctual observance and performance by the Customer of all of its other liabilities and obligations under the ASKIN Terms and Conditions,(all such moneys and obligations collectively referred to as **Guaranteed Obligations**).
2. If at any time and from time to time the Customer defaults or fails in the punctual payment, or any part of payment, the Guarantor must pay those moneys, or part of them, to ASKIN immediately upon demand as directed by ASKIN.
3. If at any time and from time to time the Customer fails in the due and punctual observance and performance of any **Guaranteed Obligations**, the Guarantor:
  - a. will indemnify and keep indemnified and hold harmless ASKIN against all losses, damages, costs and expenses which may be incurred, suffered or sustained by ASKIN by reason of such default or failure of the Customer (**Default Amount**); and
  - b. must pay the **Default Amount** to ASKIN immediately upon demand whenever and as often as such a default or failure occurs.
4. If the whole or any part of the **Guaranteed Obligations** are or may be for any reason irrecoverable from the Customer by ASKIN, the Guarantor as a separate and additional liability agrees to unconditionally and irrevocably guarantee and indemnify ASKIN in respect of:
  - a. the amount of moneys (whether actual or contingent) which, if the **Guaranteed Obligations** had not been irrecoverable from the Customer, would be due to ASKIN from the Customer; and
  - b. all actions, proceedings, claims, demands, liabilities, damages costs, penalties and expenses of whatever nature (whether actual or contingent) suffered, incurred or sustained by ASKIN or in connection with or arising in any way whatsoever out of the guarantee, (collectively, the **Indemnified Amount**).The Guarantor must pay the **Indemnified Amount** to ASKIN upon demand and the terms of the guarantee will apply *mutatis mutandis* so far as possible to this indemnity obligation.
5. The Guarantor charges in favour of ASKIN:
  - a. all of their estate and interest in any real property that the Guarantor owns at present and in the future with the amount of their indebtedness under this deed until discharged; and
  - b. all of their estate and interest in any personal property that the Guarantor owns at present and in the future with the amount of their indebtedness under this deed until discharged.
6. The Guarantors acknowledge and agree that this guarantee and indemnity is a security agreement between the Guarantor and ASKIN that a security interest for the purposes of the *Personal Property Securities Act 2009 (Cth)*
7. This guarantee is a continuing guarantee and where two or more persons execute this guarantee the proportion and share of liability will be jointly and severally born by all of those persons. ASKIN is entitled to seek payment in full from any one or more of the persons who execute this guarantee without seeking payment or contribution from other guarantors.
8. All dividends compositions and payments received by ASKIN from the Customer or from the Customer's estate, whether in liquidation or otherwise, must be taken and applied by ASKIN as payments without being any deduction in respect of any claim arising under this guarantee. The Guarantors right to be subrogated to ASKIN or any other person in respect of any document or arrangement (regardless of the parties to any such document arrangement) does not arise until ASKIN has received the full amount of all of ASKIN's claims against the Customer.
9. ASKIN may at any time, in its absolute discretion, and without giving notice whatsoever to the Guarantors, refuse further credit or supplies to the Customer.
10. The undertaking, guarantee and indemnity in this deed is a principal and independent obligation of the Guarantor and is not ancillary or collateral to any other obligation.
11. This guarantee is without prejudice to and will not be affected by nor will the rights or remedies of ASKIN against the Guarantor be in any way prejudiced or affected by:
  - a. ASKIN taking or failing to take or enforcing or failing to enforce any security taken by ASKIN from the Customer or from any other person;
  - b. any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantor or any one or more of the parties that comprise the Guarantor;
  - c. by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor or any of the parties that comprise the Guarantor from all or any part of the Guarantor's obligations contained in this guarantee and indemnity;
  - d. 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; or
  - e. the death or incapacity of the Customer or other party or parties comprising the Guarantor.
12. In the event of the Customer entering liquidation, the Guarantor authorises ASKIN to prove as its agent for all moneys for which the Guarantor is liable to the Customer, including moneys which the Guarantor has paid under this guarantee. The Guarantor irrevocably authorises ASKIN to retain and carry into a suspense account and to appropriate at ASKIN's discretion any dividends received in any liquidation or bankruptcy of the Customer as was as all moneys received in respect of the guaranteed obligations until the guaranteed obligations have been satisfied in full.
13. No changes in the constitution of ASKIN impair or discharge the Guarantor's liability under this guarantee.
14. This guarantee will continue in full force until discharged in writing by ASKIN. The continuing nature of this guarantee remains unaffected by the Guarantor no longer being a director, shareholder or owner of the Customer.
15. To give effect to this guarantee, the Guarantor declares that ASKIN is at liberty to act as though the Guarantor was the Customer and the Guarantor waives all and any rights as guarantor that may at any time be inconsistent with any of the above provisions.
16. If any clause or part of any clause contained in this deed is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If that is not possible, the clause (or the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
17. This guarantee and indemnity is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

**WARNING: This deed has personal legal and financial consequences. Seek independent legal and financial advice if you do not understand the obligations contained in this deed.**

## Executed as a Deed

Signed, sealed and delivered by **the Guarantor** in his/her personal capacity

Signed, sealed and delivered by **the Guarantor** in his/her personal capacity

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

In the presence of:

In the presence of:

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# ASKIN's Terms and Conditions of Supply

## Formation of Contract

1. These terms and conditions shall apply to all services and goods supplied by ASKIN Pty Ltd and its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) (**Supplier or ASKIN**).
2. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
3. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

## Payment Terms

4. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the date of the statement. Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
5. Should the Purchaser not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee (excluding interest provided for elsewhere in these terms) of:
  - a. 10 percent of the amount of the invoice payable; and
  - b. a further 10 percent per annum payable per year, or part thereof, until payment by the Purchaser.

## Pricing

6. Unless otherwise agreed in writing, the price charged for goods shall be the price as determined by the Supplier at the date of delivery.
7. Any price indications or price lists are subject to alteration.
8. Where applicable the Purchaser must bear any GST on the goods.

## Delivery

9. The Supplier will make all reasonable effort to have the goods delivered to the Purchaser or their designated agent on the date agreed between the parties but the Supplier shall not be liable for any failure to deliver or delay in delivery for any reason.
10. Delivery should be deemed to have taken place at the time of physical taking of the goods by the Purchaser or by a carrier, whether engaged by the Supplier or by the Purchaser.
11. The Purchaser's representative must be present at the delivery address at the time the goods are delivered. The representative must sign the delivery advice that the driver of the delivery vehicle presents.
12. If specifically agreed that the goods are sold ex-Supplier factory, at its costs and risk, the Purchaser must collect the goods within the time agreed, or within thirty (30) days of the contract.
13. The Supplier shall not be liable for freight costs on goods returned to it by the Purchaser.

## Cancellation of Orders

14. Orders placed with the Supplier cannot be cancelled without written approval of the Supplier.
15. In the event that the Supplier accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Purchaser to the date of cancellation including a fee for the processing and acceptance of the Purchaser's order and request for cancellation.

## Customer return of Goods/Credit Policy

16. The Purchaser will be deemed to have accepted the goods as being in accordance with its order unless it notifies the Supplier in writing of any alleged defect or deficiency in the quality, quantum or otherwise of the goods within seven (7) days of receipt of the goods.
17. In the case of Supplier's error:
  - a. Where the Supplier has a non-compliance issue covering size, quality or quantity, the items are returnable at the Supplier's cost including freight; and
  - b. The Supplier will re-supply complying goods.
18. In the case of Purchaser's changed requirement or error:
  - a. Where the Purchaser changes an order, has excess requirements or has made an error, these items will only be accepted if the items are the Supplier's standard products and the Supplier can resell as new items (which it may determine in its sole discretion):
    - i. a restock fee of 10 percent will be charged;
    - ii. goods only accepted on inspection if in a good condition;
    - iii. all freight costs will be borne by the Purchaser;
  - b. Non-standard or damaged items are not returnable, which includes doors that are measured specifically for the Purchaser;
  - c. Specially manufactured goods or bought in goods are not returnable.
19. Prior written approval is required for returns which may be provided in the Supplier's sole discretion and:
  - a. All items being returned must be agreed with a sales representative who will prepare documents that support the administration process, including a Returns Authorisation Reference that will be advised by sales to the Purchaser;
  - b. Purchasers must not return items without this reference number and prior approval.
    - i. Goods returned must be accompanied by the Return Authorisation Reference number provided by the sales representative.
    - ii. Prior approval to return goods may be provided but the Supplier retains the right to revoke the approval pending final inspection of the returned goods at the Supplier's stores. The goods must be in as new condition. If the goods are not in such condition the Supplier will advise.
    - iii. If the returned goods are in acceptable condition the processing of credit notes will then proceed and documents forwarded to the Purchaser.
    - iv. Goods not authorised for return will not be accepted by the Supplier.

## Jurisdiction

20. The Purchaser acknowledges and agrees that this agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
21. The Purchaser acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Purchaser is formed at the address of the Supplier.
22. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.
23. The Purchaser agrees that the proper forum for any dispute is the courts of Victoria and any claim must be commenced in such courts.

## Security & Charges

24. The Purchaser charges in favour of the Supplier all of its estate and interest in any real property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
25. The Purchaser charges in favour of the Supplier all of its estate and interest in any personal property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
26. The Purchaser appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Purchaser's name and as the Purchaser's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Purchaser may own in any Land Titles Office in any state or territory of Australia, even though the Purchaser may not have defaulted in carrying out its obligations hereunder.
27. Where the Purchaser has previously entered into an agreement with the Supplier by which the Purchaser has 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 agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Retention of Title

28. Title in the goods does not pass to the Purchaser until the Purchaser has made payment in full for the goods and, further, until the Purchaser has made payment in full of all the other money owing by the Purchaser to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
29. Whilst the Purchaser has not paid for the goods supplied in full at any time, the Purchaser agrees that property and title in the goods will not pass to the Purchaser and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
30. Until payment in full has been made to the Supplier, the Purchaser will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
31. The Purchaser will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Purchaser will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Purchaser on trust for the Supplier absolutely.
32. The Purchaser's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 30 hereof unless and until the funds held on trust are remitted to the Supplier.
33. The Purchaser agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Purchaser, to enter upon any premises occupied by the Purchaser (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Purchaser) to inspect the goods of the Supplier and to repossess the goods which may be in the Purchaser's possession, custody or control when payment is overdue.
34. The Purchaser will be responsible for the Supplier's costs and expenses in exercising its rights under clause 31. Where the Supplier 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 Purchaser against the Supplier, its employees, servants or agents.
35. The Purchaser agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Purchaser on those goods, and the Purchaser hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Purchaser.
36. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009* (Cth).

## Cancellation of Terms of Credit

37. If the goods are supplied on credit, the Supplier reserves the right to withdraw credit at any time, whether the Purchaser is in default under the terms of this agreement or not.
38. Upon cancellation with or without notice all liabilities incurred by the Purchaser become immediately due and payable to the Supplier.

## Indemnity

39. The Purchaser agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## Provision of Further Information

40. The Purchaser undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Purchaser's creditworthiness, including an updated credit application if requested.

41. If the Purchaser is a corporation (with the exception of a public listed company), it must advise the Supplier 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 Supplier may ask for new guarantors to sign a guarantee and indemnity.

## Corporations

42. If the Purchaser is a corporation, the Purchaser warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Purchaser's obligations to the Supplier as requested by Supplier.

## Trustee Capacity

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

## Partnership

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

## Insolvency

47. If the Purchaser becomes insolvent, the Purchaser remains liable under this agreement for payment of all liabilities incurred hereunder. The Purchaser remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Purchaser being insolvent.

## Waiver

48. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Purchaser must be made by the Purchaser's authorised officer in writing.
49. Until ownership of the goods passes, the Purchaser waives its rights it would otherwise have under the PPSA:
  - a. under section 95 to receive notice of intention to remove an accession;
  - b. under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - c. under section 121(4) to receive a notice of enforcement action against liquid assets;
  - d. under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - e. under section 130 to receive a notice to dispose of goods;
  - f. under section 132(2) to receive a statement of account following disposal of goods;
  - g. under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - h. under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - i. under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - j. under section 142 to redeem the goods;
  - k. under section 143 to reinstate the security agreement; and
  - l. under section 157(1) and 157(3) to receive a notice of any verification statement.

## Costs

50. The Purchaser must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Purchaser. The Purchaser must also pay for all stamp duty and other taxes payable on this agreement (if any).
51. The Purchaser will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Purchaser to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
52. The Purchaser acknowledges and agrees that payments by the Purchaser will be applied by the Supplier as follows:
  - a. in payment of any and all collection costs and legal costs in accordance with clauses 31 and 49;
  - b. in payment of any interest incurred in accordance with clause 53; and
  - c. in payment of the outstanding invoice(s).

## Taxes and Duty

53. The Purchaser must pay GST on any taxable supply made by the Supplier to the Purchaser under this agreement. The payment of GST is in addition to any other consideration payable by the Purchaser for a taxable supply.

# ASKIN's Terms and Conditions of Supply



54. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
  - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
  - the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Purchaser, then the Purchaser must pay the Supplier these additional amounts on demand.

## Interest Rates

55. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

## Set-off

56. All payments required to be made by the Purchaser under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
57. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Purchaser by the Supplier.

## Miscellaneous

58. The Supplier is not liable for any loss caused to the Purchaser by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other matter beyond the Supplier's control.
59. In relation to the supply of goods, the Supplier's liability is limited to the lesser of:
- replacing the goods or supplying similar goods;
  - repairing the goods;
  - providing the cost for replacing the goods or for acquiring equivalent goods; or
  - providing the cost for having the goods repaired.
60. In relation to the supply of services, the Supplier's liability is limited to the lesser of:
- supplying the service again; or
  - providing for the cost of having the services supplied again.
61. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other similar loss suffered by the Purchaser.
62. The Purchaser will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Purchaser under the PPSA.
63. The Purchaser 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 Supplier by the Purchaser or the Purchaser's authorised representative.
64. The Purchaser further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
65. The Purchaser irrevocably grants to the Supplier the right to enter upon the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Purchaser shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
66. 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 of the Competition and Consumer Act 2010 (Cth) or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified. Severance
67. 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.
68. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

## Variation

69. The Purchaser agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Purchaser.
70. Any proposed variation to these terms and conditions by the Purchaser must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
71. No variation to the terms requested by the Purchaser shall be effective unless agreed to in writing by the Supplier in a document which is hand-signed by an authorised officer of the Purchaser.

## Consent to Register

72. The Purchaser hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
73. The Purchaser waives 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

## Entire Agreement

74. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are superseded by this Agreement and its terms. 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.

## Design

75. The Purchaser agrees that the Supplier is supplying goods only and is not supplying any design or certifying the design of, or in relation to, any of the supplied goods unless the Purchase Order explicitly states otherwise.
76. If the Purchase Order explicitly specifies a design to be supplied by the Supplier:
- the Supplier relies on all preliminary information, existing designs, calculations, dimensions, approvals and any other material or information supplied by the Purchaser to the Supplier;
  - the Supplier relies on any assumptions noted to the Purchaser prior to, or with, the provision of any design; and
  - the Supplier does not warrant the design will be fit for purpose except for any purposes or requirements notified to the Supplier in writing by the Purchaser.
77. To the extent permitted by law, the Supplier is not liable for any costs, losses, expenses or damage suffered by the Purchaser:
- when the loss relates to an assumption noted by the Supplier that the Purchaser knew, or reasonably ought to have known, was incorrect and the Supplier was not notified the assumption was incorrect;
  - arising from a failure to identify or notify of any discrepancies, errors or omissions in:
    - any of Purchaser's existing designs; or
    - between any existing design and any design supplied by the Supplier;
  - from a failure of the design to integrate with existing structures, works or buildings that are not expressly notified to the Supplier before the Purchase Order; and
  - when the design provided by the Supplier has not been complied with or is incorrectly implemented by the Purchaser, its agents, its employees or other parties who are not the Supplier.
78. The Supplier retains rights, title and interest in all intellectual property rights that arise from, or as a consequence of, the design supplied to the Purchaser. The Supplier grants the Purchaser a non-exclusive non-transferable licence for the use of any such intellectual property. The intellectual property may only be transferred to third parties with the prior written consent of the Supplier.

## Design Certification

79. If the Purchase Order specifies a design that requires certification under the *Design and Building Practitioners Act 2020 (NSW)*, *Building Act 1975 (Qld)* or *Building Regulation 2006 (Design Certification)* or Design Certification is otherwise required under any other law, standard or similar additional fees are payable in accordance with the table below:

Reg 126 Review	\$1320
Reg 126 Design	Hourly rates
Form 15	\$960
Section 40	\$960
Site Visit (Day rate)	\$1200
Design Advice Letter	\$1200
Any other design work	Hourly rates

## Hourly Rates (all excluding GST)

Draftsperson	\$150
Lab Technician	\$150
Engineer	\$180
Senior Engineer	\$240
Principal Engineer	\$300

80. If no particular fee is specified the additional fee shall be equal to 2% of the value of the Purchase Order unless otherwise agreed.
81. The rights and exclusions set out in these terms continue to apply, to the extent permitted by law, if the Supplier provides design certification.

## Electronic signature

82. For the purpose of this clause "Electronic Signature" shall mean data in electronic form which is attached to or logically associated with other data in electronic form and which is used by a signatory to sign and includes, without limitation, typing a name into a contract, inserting a signature (in the form of an image) into a contract or using a web-based electronic signature platform to generate an electronic representation of a handwritten signature or a digital signature using public key encryption technology.
- The parties agree that this agreement, and any documents to be signed in connection herewith, may be electronically signed and the use by a party of an Electronic Signature shall, for the purposes of validity, enforceability and admissibility, be conclusive evidence of that party's intention to be legally bound as if such signature had been written by hand.
  - In the event that an Electronic Signature is, for any reason whatsoever, not recognised by any relevant person, entity or authority in any applicable jurisdiction, each party undertakes, upon request, to promptly provide a handwritten signature on any relevant document.
  - This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. A counterpart bearing an Electronic Signature shall satisfy the requirements of this clause.

## Privacy Act Authority

The privacy of your personal information is important to ASKIN and we will ensure that it is held, used and disclosed consistently with the Privacy Act 1988 (Cth) (**Act**) which is binding on us. The following is an outline of certain matters relating to the collection and use by ASKIN and the disclosure of your personal information to ASKIN in connection with this application for credit.

Subject always to the provisions of the Act and to the extent it applies:

## Collection and use of your personal information

ASKIN collects and uses your personal information to assess Applications for commercial credit, manage accounts and, if necessary, insure our risk in respect of debts and to enable us to supply you with our products and/or services. By providing personal information in this application you warrant to ASKIN that you have obtained consent of the individuals whose personal information is contained in the application and any other documents provided by you to ASKIN.

If all or part of the information requested is not provided we may not be able to consider your application or provide you with commercial credit. ASKIN may be required by law, such as the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) to collect certain information. We may also collect your personal information from third parties, such as credit reporting bodies and other credit providers.

## Disclosing your personal information

ASKIN may disclose your personal information to our related or associated companies, contractors and/or to a credit reporting body which may provide this information in reports provided to other credit providers to assist them to assess your credit worthiness. You may request a credit reporting body not to use your credit reporting information for the purposes of pre-screening of direct marketing by a credit provider. You may also request a credit reporting body not to use or disclose credit reporting information about you, if you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud.

ASKIN is likely to disclose your personal information to its agents and credit reporting bodies. We may also disclose your personal information to other credit providers whether or not your account is overdue and, if necessary, our risk insurers, debt collectors and credit reporting bodies. The names of these credit reporting bodies are available upon request by the Customer to ASKIN. These agents and credit reporting bodies have policies about the management of credit related personal information available on each reporting body's website.

You may access your personal information that we hold (except in the limited circumstances recognised by the Act). By submitting this Application, the Customer acknowledges and agrees that ASKIN may:

- Give a credit reporting agency certain personal information including (your personal identifying details; the fact that this application for credit has been made and the amount; payments which become overdue for more than 60 days and for which recovery steps have commenced; advice that payments are no longer overdue; payments including cheques, credit cards and direct debits which have been dishonoured; court judgments or bankruptcy orders made against you; in the opinion of ASKIN, you have committed a serious credit infringement; ASKIN ceases providing services to you);
- Seek from or give to, persons (including your nominated trade referees, your creditors, bankers, financiers, credit providers, mortgage and trade insurers and/or credit reporting agencies), reports, information or opinions about your credit worthiness, credit standing, credit history or credit capacity and make any other inquiries as ASKIN considers reasonably necessary for such purposes;
- Give to a guarantor or intending guarantor of the proposed credit account such personal information about your creditworthiness, history, standing, and capacity relating to the subject of the guarantee, as is necessary for the entry into or enforcement or proposed enforcement of the guarantee; and
- Disclose your personal information to government or regulatory bodies or otherwise where this is required or authorised by law; to persons or entities involved in maintaining, reviewing and developing ASKIN's business systems, procedures and infrastructure; to debt collecting agencies, and to ASKIN's agents, contractors and advisers.

## Contact us

If you have any questions or concerns about our Privacy Policy, please direct your requests to our Head Office address of:

L3 Suite 3.01 150 Albert Road,  
South Melbourne, VIC 3205 Australia.