



COMMERCIAL CREDIT ACCOUNTS APPLICATION FOR A COMPANY/TRUST

UNDERTAKINGS

I/We hereby apply for a commercial Credit Account with Argus Realcold Pty Ltd ("Argus") and acknowledge that Argus will without obligation on its part consider this Application.

I/We hereby acknowledge that should Argus decide to supply goods or services, all contracts for the sale of goods by Argus to me/us shall be strictly subject to the Terms and Conditions of Sale contained herein unless I/We receive written advice to the contrary from Argus. To this end, I/We hereby acknowledge that I/We have read the Terms and Conditions of Sale and agree to be bound by them.

I/We acknowledge that Argus has informed me/us in accordance with Section 18E(8) of the Privacy Act 1988 that certain items of personal information about me/us contained in this application or which may be subsequently obtained by Argus may be disclosed to a credit reporting agency. This information includes, among other things, particulars as to my/our identity, the fact an application for credit was made and the amount of credit sought, details of current providers of credit and details of any credit at least 60 days overdue, cheques twice dishonoured and serious credit infringements.

I/We agree:

- (a) to Argus obtaining from a credit reporting agency a credit report containing personal information about me/us for the purpose of Argus
(i) assessing my/our application for commercial credit;
(ii) collecting overdue payments in respect of commercial credit provided to me/us.
(b) that Argus may give to and seek from any credit provider listed in this Application or in a credit report issued by a credit reporting agency information about my/our credit arrangements for the purpose of assessing, on an ongoing basis, my/our credit worthiness.

DATED THIS DAY OF.....20.....

SIGNATURE OF APPLICANT (S):

PRINT NAME AND POSITION:

- 1.....
2.....
3.....

WITNESS SIGNATURE:

WITNESS FULL NAME AND ADDRESS:

DETAILS SUPPORTING AN APPLICATION FOR COMMERCIAL CREDIT ACCOUNT FOR A COMPANY OR TRUST

1. APPLICANT DETAILS:

TRADING NAME: _____
FULL NAME OF COMPANY/TRUST _____
ADDRESS (NOT BOX No.) _____ POSTCODE: _____
POSTAL ADDRESS: _____ POSTCODE: _____
DELIVERY ADDRESS: _____
PHONE No: (____) _____ FAX No: (____) _____
E-MAIL ADDRESS: _____
ABN: _____ DATE BUSINESS COMMENCED: _____
ACN: _____
CONTACTS: MANAGER: _____
ACCOUNTS: _____
PURCHASING: _____
TYPE OF BUSINESS: _____

2. DIRECTORS/TRUSTEES-

2.1 NAME and ADDRESS

- a. _____
- b. _____
- c. _____

2.2 Is this Company owned by any other Company? [] YES [] NO

If Yes, please give name and percentage owned: _____

2.3 Have any Securities or Charges been given over any assets? [] YES [] NO

If Yes, please supply brief details: _____

2.4 Has any person(s) mentioned as a Director or Trustee of the applicant been in the last five years, associated with a Company as a Director, Secretary, Trustee or any other office holder which has gone into liquidation, or made any arrangement with or assignment for the benefit of their creditors? [] YES [] NO

If Yes, provide brief details: _____

3. TRADE REFERENCES (NOTE: THESE MUST BE CURRENT COMMERCIAL TRADING ACCOUNTS):

SUPPLIER	CITY	PHONE NO. & CONTACT NAME
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

BANK: _____ BRANCH OF BANK: _____

I/We certify that the above information is true and correct and that I/we am authorised to make this application for credit on behalf of the Applicant. In accordance with the Privacy Act (1988) I/we authorise any person or company to give information as may be required in response to credit inquiries. I/We further authorise and request the Referees listed in this Credit Application to release information now and in the future to assist in establishing and maintaining a line of credit with Argus.

If my/our Credit Application is accepted, I/we understand that I/we will receive credit to the end of the month following the month of the date of the invoice. Credit will be stopped if the invoice is not paid by the end of the month following that in which the invoice was due for payment. I also acknowledge that title of goods, the subject of this application, will remain vested in the supplier until full payment of the relevant account has been made and that until such time, Argus has a right to recover the goods (including a right to enter the premises of the Applicant).

Signed: Signed:

Print Name: Print Name:

Title (eg. Director): Title:

Date: Date:

(If this Credit Application is on behalf of a proprietary company, the Application must be signed by two Directors; or a Director and Company Secretary; or if the company has a Sole Director, by that Sole Director.)

FOR OFFICE USE ONLY

RESULT OF CREDIT CHECKS:

BANK: _____

REFERENCES: (1) _____

(2) _____

(3) _____

EST OF MONTHLY PURCHASES \$ _____ DISCOUNT CODE: _____

TERRITORY: _____ BRANCH: _____

ACCOUNTS MANAGER: _____ BRANCH MANAGER: _____

DATE SUBMITTED: _____ ACC APPROVED: _____ CREDIT CONTROLLER/SALES MANAGER

ACCOUNT NUMBER: _____ DATE: _____

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 the parties named in the Schedule as **Argus Realcold Pty Ltd ("Argus")**.

INTRODUCTION

A The Guarantors have asked **Argus** to supply goods and/or services ("the Supplies") to the person named in the Schedule ("the Customer") and to extend (or continue to extend) credit to the Customer.

B **Argus** has agreed to this request of the Guarantors in consideration of their agreement as follows:

IT IS AGREED:

1. The Guarantors guarantee to **Argus** the punctual payment of the monetary liabilities of the Customer (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 Customer to **Argus** ("the Debt"). The Guarantors acknowledge and agree that the Debt includes any legal and other costs and expenses incurred by **Argus** in seeking payment from the Customer or in enforcing this Guarantee and indemnity against the Guarantors.
2. The Guarantors jointly and severally undertake, if the Customer 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 **Argus** and to keep **Argus** indemnified against any loss in relation to the Debt and by way of further security hereby charges in favour of **Argus** 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 registrable instrument charging such estate or interest in favour of **Argus**.
3. 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 **Argus** and the Customer in respect of the terms on which the Supplies are supplied and paid for;
 - (b) any waiver, extension of time or indulgence given by **Argus** to the Customer or the Guarantor;
 - (c) any right or claim which the Customer may assert to resist making payment of any part of the Debt;
 - (d) any increase in the amount of the Debt; or
 - (e) any act, omission, matter or other thing whatsoever.
4. This Guarantee and Indemnity is 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 Customer; or
 - (b) a Guarantor or the Customer which is a body corporate becoming an externally administered body corporate pursuant to the Corporations Law.
5. 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.
6. 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 claim is upheld, conceded or compromised in whole or in part;the liability of each of the Guarantors is the same as if:
 - (c) that payment or transaction (or the void, voidable or unenforceable part of it); and
 - (d) 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 **Argus** to pay to or restore to **Argus** the Debt in full.
7. If all or any of the Debt is:
 - (a) not recoverable from the Customer; or
 - (b) not recoverable from a Guarantor under this Guarantee and Indemnity;each of the Guarantors, as a separate and principal obligation, indemnifies **Argus** against any loss, liability, expense or outgoing suffered, paid or incurred by **Argus** in relation to such amounts and must pay **Argus** an amount equal to such amounts.
8. 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.
9. 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 Customer which have arisen before or after the date of this Guarantee.
- 10.1 You consent and agree that we may:
 - (a) obtain a credit report from credit reporting agencies or other credit providers for the purpose of assessing this and any other application which you may make for commercial credit;
 - (b) obtain information from any other credit providers from time to time for the purpose of reviewing and assessing your commercial creditworthiness;

- (c) disclose to or discuss with any credit providers or any credit reporting agencies, any prospective guarantor and any person or body agreeing or considering whether to agree to be liable for any credit to be made available to you, any information maintained or in our possession relating to your application and the administration of your credit facilities; and
- (d) collect and use any personal information as defined in the Privacy Act 1988 ("the Act") for the purposes referred to in the **Argus Privacy Policy** and in paragraphs 10.1(a) to (c) above.

10.2 You acknowledge that the consents referred to in paragraphs 10.1(a) to (d) above will continue to remain in full force and effect until all credit facilities cease to be made available to you by us.

10.3 **Argus** is bound by the Act and the National Privacy Principles set out in the Act.

11. 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.

GUARANTEE AND INDEMNITY - SCHEDULE

Argus: comprises **Argus Realcold Pty Ltd** ABN 25 080 650 773 and its subsidiaries whether trading under their own name or trading under any trading or business name.

Guarantors: [Insert full names and addresses]

- (1) _____
- (2) _____
- (3) _____
- (4) _____

Customer: [Insert full name and addresses including ABN if a company]

SIGNED the _____ day of _____ 200 .

SIGNED by Guarantor (1) _____

in the presence of: _____ (Signature of Witness) _____ (Name of Witness)

Address of Witness: _____

SIGNED by Guarantor (2) _____

in the presence of: _____ (Signature of Witness) _____ (Name of Witness)

Address of Witness: _____

SIGNED by Guarantor (3) _____

in the presence of: _____ (Signature of Witness) _____ (Name of Witness)

Address of Witness: _____

SIGNED by Guarantor (4) _____

in the presence of: _____ (Signature of Witness) _____ (Name of Witness)

Address of Witness: _____

TERMS & CONDITIONS OF SALE

1. INTERPRETATION

Unless inconsistent with the context: "the Agreement" shall mean and include the terms and conditions contained herein and on the face hereof; "the Company" shall mean and include Argus Realcold Pty Ltd; "the Customer" means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company; "the Goods" means the goods and/or services supplied by the Company pursuant to this Agreement; "Contract" means the contract between the Company and the Customer for the sales and purchase of goods and/or services.

2. EXCLUSION OF INCONSISTENT TERMS

Any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions (including any statement by the Customer that the Customer terms and conditions shall prevail) are expressly excluded. This Agreement constitutes the entire agreement between the parties.

3. FORMATION OF CONTRACT

A Contract shall only be or be deemed to have been entered into between the Company and the Customer for the sale of Goods when, upon an order having been placed with the Company for Goods, that order has been accepted by the Company either in writing or by conduct.

4. PRICES

4.1 Prices set out or referred to are recommended prices only and there is no obligation to comply with the recommendation.

4.2 All prices are ex-warehouse, freight and handling are extra. GST is not included in our prices and will be charged as applicable.

4.3 All prices may be varied by the Company without notice.

5. FORWARDING INSTRUCTIONS

The Customer should state its preferred method of transport on orders. If the Company cannot comply with the Customer's preference, or if none is stated, the Company will forward goods by the method the Company considers best. All goods travel from the Company's warehouse at the Customer's risk. If the Customer wishes to have its goods insured, please advise the Company.

The Company will not accept liability or responsibility for any direct or consequential loss or damage caused directly or indirectly by delay arising for any reason whatsoever, including failure from any cause whatever to deliver the whole or any part of the goods. Without restricting the generality of the foregoing, the Company shall not be liable for any loss or damaged caused directly or indirectly by war, strikes, lockouts, perils of the sea, or any other cause beyond its control.

6. ORDERS

Orders are accepted to our ability to fulfil. The Company does not accept responsibility for delays.

7. PAYMENT

7.1 Unless otherwise agreed by the Company in writing, payment for all Goods shall be made prior to the end of the month following that in which the goods are invoiced. Punctual payment is agreed to be of the essence of the contract.

7.2 Non-payment for any or all Goods by the due date will be considered by the Company to be a breach of the terms of sale and, in addition to any other rights this Company may have, the Company may undertake to:

(i) cancel the Customer's right to operate a commercial credit account with the Company;

(ii) charge interest on any outstanding amount, calculated from the day following the date upon which payment should have been made, at a rate equal to the Company's then current overdraft rate, as varied from time to time;

(iii) commence legal proceedings in a court of competent jurisdiction for the recovery of any unpaid sums from the Customer;

(iv) add to any outstanding amount/s any debt collection expenses incurred, or to be incurred, as a consequence of actions taken by the Company to recover non-payment/s by the Customer, including legal costs on a solicitor and own client basis;

(v) retake physical possession of the Goods.

7.3 Any credit extended to the Customer by the Company under the Agreement will be deemed due and payable immediately upon the commencement of any action or proceeding in which the Customer's solvency is placed in issue.

7.4 The Customer will not be entitled to withhold any payments or make any deductions in respect of any set offs, counterclaims or cross demands claimed by the Customer against the Company for whatever reason.

7.5 The Customer undertakes to pay all Bank Charges incurred by the Company in respect of any cheques not met upon first presentation to the Bank.

8. TITLE

8.1 Property in any goods sold by the company shall not pass from the Company to the Customer until the Customer has paid for the goods (including any interest) in full and all cheques and other negotiable instruments have been cleared. The risk of loss or of damage to the Goods shall be entirely at the risk of the Customer immediately upon the Goods leaving the premises of the Company, in the course of the delivery of the Goods to the Customer.

8.2 The Company reserves the right to retake physical possession of the Goods if any of the following occurs:

(i) payment for any Goods sold to the customer by the Company is overdue;

(ii) the Customer pays the Company by cheque (in full or in part) and such cheque is not met on presentation by the Company;

(iii) the Customer commits an act of bankruptcy as defined by the *Bankruptcy Act 1966*, as amended, or in the case of a corporation, commits an act of insolvency as defined by the *Corporations Act 2001* as amended;

(iv) a receiver or trustee is appointed to the Customer's property;

(v) the Customer's affairs become subject to external administration.

For this purpose the Customer hereby consents to the Company, or its agents or servants, entering upon the Customer's premises.

8.3 It is not intended by the Company or the Customer, by supplying or accepting Goods on conditions of this Clause, to create a charge, mortgage, or other mere security interest over any Goods supplied.

8.4 For this purpose the Customer hereby consents to the Company, or its agents or servants, entering upon the Customer's premises in order to effect recovery of the Goods and to use any reasonable means of force in order to effect recovery, without incurring liability for trespass or any resulting damage. The Company will have the right to resell or otherwise dispose of the Goods without further reference to the Customer.

8.5 If any of the goods are incorporated into or used by the Customer as parts, components or materials in respect of any other product/s of the Customer before the Customer has made payment in full for the goods, the subsequently transformed product/s of the Customer will become those of the Company and remain the property of the Company until such time as payment in full for the goods has been made by the Customer.

8.6 The Customer acknowledges that until the Customer's total indebtedness to the Company is discharged, the Customer holds the goods as bailee of the Company and that a fiduciary relationship comes into existence between the Company and the Customer.

8.7 In the event that the Customer sells the Goods or any product/s in which the Goods have become consumed or a component of to any third party before making full payment for the Goods, then the Customer, in a position of fiduciary:

(i) assigns to the Company the benefit of any claim against the third party;

(ii) is required to account to the Company for the proceeds of the sale of the Goods or product/s sold or any part thereof until the Customer's total indebtedness to the Company is discharged.

8.8 The Customer agrees to indemnify the company against all expenses, losses and damages incurred or sustained by the Company as a result or in relation to the exercise of the Company's right under these conditions.

9. CHARGE

The Customer hereby charges in the Company's favour with payment of all monies owed to the Company by the Customer and/or any of them all of his, her or its estate and interest in any land and/or in any other assets whether tangible and/or intangible in which the Customer now has any legal and/or beneficial interest and/or in which the Customer later acquires any such interest, and the Customer agrees to execute on request, a registrable instrument and/or any other necessary documents, transferring to the Company such estate and interest by way of security.

10. RETURN OF GOODS

The Company reserves the right to accept or reject the return of goods. Any goods which are **NOT** normal stock are **NOT** returnable. Goods accepted back for credit (if applicable) are subject to a 10% restocking fee to cover handling, documentation, restocking etc. Goods returned for credit shall be returned to the company, not more than 30 days after the invoice date. Goods so returned shall be returned in their original condition (including packaging) at the Customer's expense, together with details of the original invoice number. No credit shall be given for goods returned after the said 30 days.

11. SHORTAGES

Claims for shortages in delivery or damage to Goods may only be made within two business days from the date of delivery.

12. SAMPLES

Any Sample, catalogue or brochure shown to the Customer is solely for the purpose of enabling the customer to judge the normal commercial quality and finish of the Company's products and not so as to constitute a sale by sample or a sale by description nor does the Company warrant or agree that the bulk of the Goods will conform with any such Sample or description.

13. CHANGES TO THE PARTICULARS OF THE PROPRIETORS OR THE BUSINESS

The Customer is to notify the Company, in writing within seven (7) days, of any proposed or actual change in:

- (i) the address of the business and the address at which the Goods will be located (if it differs to the business address);
- (ii) the trading name of the business;
- (iii) the person(s), the Directors, the Trustees, or the partnership conducting the business;
- (iv) the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company.

Upon being notified by the Customer of any of the above proposed or actual changes the Company may require the Customer to complete a new application for a commercial credit account and enter into a new credit agreement including personal guarantees by directors and/or trustees of any company or trust conducting the business.

The Customer agrees to indemnify the Company against any damage or loss incurred by it as a result of the Customer's failure to notify the Company of any such changes.

14. PROPER LAW

The Contract between the Company and the Customer shall be governed by and construed in accordance with the laws for the time being enforced in Queensland and the parties hereby submit to the jurisdiction of the courts in Brisbane in the State of Queensland.

15. INDEMNITY

The Customer shall indemnify and keep indemnified the Company from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from the Goods or their use of from any advice given to the Customer by the Company. This includes the fitment of incorrect goods as the onus is clearly with the Customer to ensure the Goods supplied are correct for the particular job.

16. SEVERANCE

If for any reason any part of these terms and conditions would render the Agreement ineffective, void, voidable, illegal or unenforceable, that part shall without in any way affecting the validity of the remainder of the Agreement, be severable herefrom and the Agreement shall be read and construed and take effect for all purposes and if that part were not contained herein.

17. WAIVER

The waiver by the Company of any breach by the Customer of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

18. IMPLIED TERMS

18.1 Except as required by statute (including the *Trade Practices Act 1974*), all implied conditions and warranties are hereby excluded. Subject to the extent that such conditions and warranties cannot be excluded under statute (including the *Trade Practices Act*), the Customer's sole and exclusive remedy for any breach of a condition, warranty or undertaking hereunder (whether direct, indirect, special or consequential) shall be limited at the sole discretion of the Company to any of one of the following:-

(a) in the case of Goods:-

- (i) the replacement of the relevant goods or supply of equivalent goods;
- (ii) the repair of the relevant goods;
- (iii) the payment of the cost of replacing the relevant goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the relevant goods repaired

within a limited period of 12 calendar months after despatch from the Company's works shall have proved defective (fair wear and tear excepted) provided the goods have been properly erected assembled and maintained.

18.2 Any warranty shall not apply to any goods or components manufactured by a person other than the Company even though such goods or components may be included in equipment sold by the Company. In lieu of any warranty, condition or liability express or implied by law or statute in respect of such goods or components the Company's obligation shall be limited to passing on to the purchaser such guarantee restitution as the Company shall actually receive from the manufacturer in respect of such goods or components.

18.3 Except as required by statute (including the *Trade Practices Act 1974*) the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arise out of the negligence or carelessness of the Company or any of its employees, servants or agents. For the purpose of the foregoing, "consequential loss" shall include, but not be limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of goods or services.

18.4 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 or services pursuant to this Agreement of all or any of the provisions of Part V of the *Trade Practices Act 1974* (as amended), Section 6 of the *Manufacturers' Warranties Act 1974* of the State of South Australia or Section 7 of the *Law Reform (Manufacturer, Warranties) Ordinance* of the Australian Capital Territory or any other relevant Act which by law cannot be excluded, restricted or modified.

19. NOTICES

All notices between the Company and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post to the last known address of the Company or the Customer, whichever may apply. Notices shall be deemed to have been delivered two (2) days after mailing.

20. CREDIT REFERENCE AGENCY

20.1 The Customer hereby authorises the Company to obtain a credit report containing personal information:

- (a) pursuant to Section 18K(1)(a) of the Privacy Act about the Customer for the purpose of assessing this application; and
- (b) pursuant to Section 18K(1)(h) of the Privacy Act about the Customer for the purposes of collecting payments from the Customer in relation to any credit provided to the Customer.

20.2 The Customer further acknowledges that pursuant to Section 18N(1)(b) of the Privacy Act, the Company is hereby authorised to give and obtain information from another credit provider any record that has any bearing on, and for the purpose of assessing the Customer's credit worthiness, standing or history. The Customer acknowledges that in accordance with Section 18E(8)(c) of the Privacy Act, the Customer understands and accepts that the information contained in this application may be given to a credit reporting agency.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties. Any and all prior agreements, warranties or representations made by either party are superseded by this Agreement. Any changes to this Agreement are to be made by a separate document and signed by both parties.

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