

APPLICATION FOR COMMERCIAL CREDIT

Please tick: Is the Applicant? A Company A Partnership A sole Trader

Applicant's Trading Name: _____

Applicant's Full or Legal Name: _____

ABN: _____ ACN: _____

Date Incorporated: _____ Requested Credit Limit: _____

Billing Address: _____ Physical Address: _____

_____ Postcode: _____ _____ Postcode: _____

Telephone: _____ Fax: _____

Are your Business Premises? Owned Rented/Leased Mortgaged
Held in the Name of the Applicant? Yes No

Accts Contact: _____ Purchasing Contact: _____

Telephone: _____ Telephone: _____

Email: _____ Email: _____

NAME (S) AND ADDRESSES OF INDIVIDUAL, PARTNERS, DIRECTORS OF APPLICANT (S):

(1) Full Name: _____ (3) Full Name: _____

Residential Address: _____ Residential Address: _____

Owned Rented Mortgaged Owned Rented Mortgaged

Telephone: _____ Telephone: _____

Date of Birth: _____ Date of Birth: _____

(2) Full Name: _____ (4) Full Name: _____

Residential Address: _____ Residential Address: _____

Owned Rented Mortgaged Owned Rented Mortgaged

Telephone: _____ Telephone: _____

Date of Birth: _____ Date of Birth: _____

Have any of the Applicant's Directors/Proprietors previously been declared bankrupt, entered into a Part X Scheme, entered into an arrangement with creditors or been involved with a company which has been insolvent, placed into official management; voluntary administration, receivership or liquidation?
 YES NO

If yes, please state details: _____

Is the Applicant a subsidiary/division of a parent company? YES NO

If yes, Parent Company: _____

Is the company a trustee for any trust? YES NO

If yes, name of trust: _____

Has the Applicant always traded under the same name? YES NO

If no, what was the previous name: _____

Name of Bank: _____ Branch: _____

Account No.: _____ Telephone: _____

APPLICANTS TRADE REFERENCES:

(1) Name: _____ (3) Name: _____

Telephone: _____ Telephone: _____

Fax: _____ Fax: _____

(2) Name: _____ (4) Name: _____

Telephone: _____ Telephone: _____

Fax: _____ Fax: _____

DECLARATION AND AGREEMENT OF APPLICANT

Signatories and the Applicant agree to Avida obtaining from any credit reporting agency, credit reports containing personal credit information about Signatories and the Applicant in connection with assessing this application for commercial credit, collecting overdue payments on commercial credit provided to the Signatories or the Applicant or assessing acceptance of the Signatories as guarantor for commercial credit applied for or provided to Signatories or the Applicant, and that the Signatories and the Applicant's agreement remains in force until all amount payable by the Signatories and the Applicant in connection with the trading account opened under this application (including any guarantees) are discharged in full.

Signatories and the Applicant further agree that Avida may give to any credit provider named in a credit report issued by a credit reporting agency, information about Signatories or the Applicant's credit arrangements (including information about the Signatories credit worthiness, credit standing, its history or credit capacity which credit providers may give each other under the Privacy Act) and that the information may be used to assess an application by the Signatories or the Applicant for credit, to notify other credit providers of a default by the Signatories or by the Applicant, and to exchange information with other credit providers as to the status of this trading account where the Signatories or the Applicant default with other credit providers.

Signatories and the Applicant declare that they have been provided with a copy of Avida General Terms and Conditions of Sale current at the date of signing the trading account application and the Signatories and the Applicant agree to be bound by these General Terms and Conditions of Sale.

Signatories and the Applicant declare that the information provided in the application is true and correct and undertake to advise Avida in writing within seven (7) days of any change in the information so provided.

Signatories declare that they are authorized by the Applicant to sign this application.

Signed and Dated this _____ Day of _____ Year _____ at _____

Signature: _____ Signature: _____

Name: _____ Name: _____

Position: _____ Position: _____

GUARANTEE, INDEMNITY AND CHARGE

1. In consideration of Avida ("Avida") ABN 37 101 183 290 at my/our request supplying goods and/or services from time to time to:

Customer Name _____ (the "Customer")
(Insert Company Name, ABN)

I/We _____ of _____
Address

And _____ of _____

And _____ of _____

And _____ of _____

(hereinafter called the "Guarantors") hereby agree to unconditionally and irrevocably guarantee on demand to Avida the due and punctual payment by the Customer of any amount of money whatsoever owing or at any time hereafter become owing in respect of the sale and delivery of Goods and/or Services supplied from or to be supplied by Avida to the Customer and the Guarantors hereby indemnify Avida on demand against any monetary loss or damage Avida may sustain or incur as a result of any default by the Customer in the due and punctual payment for such Goods and/or Services or as a result of any breach committed by the Customer of the Avida General Terms and Conditions of Sale (all of which are hereinafter referred to as the money hereby secured).

2. If the Guarantor is entering into this guarantee as trustee of a trust, the Guarantor agrees to abide by the terms of the guarantee both personally and in its capacity as trustee, that is liable both in its right and in its capacity as trustee of the trust and warrants to Avida that it:

- (i) has the proper power and authority pursuant to the trust to enter into this Guarantee, Indemnity and Charge;
- (ii) is entering into this Guarantee, Indemnity and Charge for a proper purpose of the trust;
- (iii) has the right to be indemnified from the trust property for each and every liability that the Guarantor incurs under this document of Guarantee, Indemnity and Charge; and
- (iv) will produce a stamped copy of the Trust Deed to Avida on request.

3. In relation to this Guarantee, Indemnity and Charge the following provisions shall apply and it is hereby agreed by the Guarantors that:

- (i) this Guarantee, Indemnity and Charge shall be a continuing guarantee and shall create a principal obligation for the amount of the money hereby secured and shall remain in force so long as any part of the money hereby secured remains owing or may become payable to Avida
- (ii) the Guarantors liability under this Guarantee, Indemnity and Charge shall not be affected by any giving of time for payment or granting of any indulgence whatsoever whether by any omission on the part of Avida to enforce any obligation against the Customer or any other fact, act or omission whereby the liabilities of the Guarantors but for this clause might have been diminished or discharged;
- (iii) Avida may at its own discretion terminate the Contracts of Sale with the Customer (without notice to the Guarantors without affecting the Guarantors liability pursuant to this Guarantee, Indemnity and Charge);
- (iv) this Guarantee, Charge or Indemnity shall not in any way be affected by an increase or decrease in the credit limit applying to the Customer's trading account with Avida from time to time;
- (v) this Guarantee, Indemnity or Charge is in addition to and not in substitution for any other security, or right currently held, or which will be taken by Avida in respect of the Customer;
- (vi) until Avida shall have received payment in full of all of the money hereby secured, the Guarantors shall not prove in any voluntary administration, liquidation, scheme of arrangement, composition or bankruptcy in competition with Avida where Avida seeks to prove in respect of any part of the money hereby secured;
- (vii) this Guarantee, Indemnity and Charge shall continue in force and the Guarantors shall remain liable hereunder notwithstanding any payment by the Customer of any part of the money hereby secured;
- (viii) if, after Avida applies any amount of the money hereby secured, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under the law relating to bankruptcy, winding up or the protection of creditors the rights of Avida under this Guarantee, Indemnity and Charge will be reinstated, and will be the same in respect of that amount as if the application, or payment or transaction giving rise to it, had not been made.
- (ix) this Guarantee, Indemnity and Charge is governed by the laws of the State of New South Wales and the Guarantors submit to the jurisdiction of the courts of that State.

4. As a separate agreement and as further security for the payment of the money hereby secured, the Guarantor hereby jointly and severally agree to charge (as beneficial owner) all freehold and leasehold interest in land which the Guarantors may now have or during the currency of this Guarantee, Indemnity and Charge may acquire with the payment of the whole of the money hereby secured and whether or not any demand has been made upon either the Customer or Guarantors to pay the money.

5. If Avida issues a demand on any or all of the Guarantors, the Guarantor shall execute any document and do anything that Avida reasonably requires to secure to Avida the amount of the money hereby secured, including (without limitation) executing, exercising or lodging any mortgage or caveat on the title of their land and interest in land, power of sale or bills of sale or mortgage debentures over any or all items of personal property of any or all of the Guarantors.

6. If the charge created in section 3 is or becomes void or unenforceable, it may be severed from this Guarantee, Indemnity and Charge without effect on its validity and the Guarantors shall not be exonerated in whole or in part, nor shall Avida remedies or recourse against the Guarantors be in any way prejudiced or adversely affected by such severance.

7. The Guarantor appoints Avida (including any attorney, employee, agent or office of Avida) to be the attorney of the Guarantor, in the name of

the Guarantor or Avida, to do any act which the Guarantor could or should do under this Guarantee, Indemnity and Charge, and to do all acts Avida deems expedient in connection with the exercise of the rights or powers contained or implied, to take security, to give effect to or to enforce the rights of Avida under this Guarantee, Indemnity and Charge. The Guarantor acknowledges that this power of attorney is given by way of security and is irrevocable until all obligations under this Guarantee, Indemnity and Charge are fulfilled.

8. The Guarantors agree that in accordance with the provisions of the Privacy Act 1988, Avida may obtain and use a credit report from a credit reporting agency concerning the Guarantors consumer or commercial activities and credit worthiness for the purpose of the assessment of the Guarantors to act as Guarantors of the Customer in connection with the proposed or ongoing provision of credit to the Customer.

9. Where there is more than one Guarantor their liability under this Guarantee, Indemnity and Charge shall be joint and several.

10. The Guarantors acknowledge that this Guarantee, Indemnity and Charge shall continue to have effect until all of the money hereby secured is paid in full.

11. In this Guarantee, Indemnity and Charge "Customer" means the Customer named in Section 1 above and (where the Customer so named is a Company) any company which by virtue of Section 50 of the Corporations Act 2001 is related to the customer, or (where the customer so named is a firm or partnership) any company which acquires or takes over the principal business of the firm or partnership and any company which as foresaid is related to the Company so acquiring or taking over.

Dated this _____ day of _____ 20 ____ at _____

Signature of Guarantor: (1) _____ Signature of Guarantor: (2) _____

Name of Guarantor: _____ Name of Guarantor: _____

Address: _____ Address: _____

Signature of Witness: _____ Signature of Witness: _____

Full Name: _____ Name of Witness: _____

Address: _____ Address: _____

Signature of Guarantor: (3) _____ Signature of Guarantor: (4) _____

Name of Guarantor: _____ Name of Guarantor: _____

Address: _____ Address: _____

Signature of Witness: _____ Signature of Witness: _____

Full Name: _____ Name of Witness: _____

Address: _____ Address: _____

GENERAL TERMS AND CONDITIONS OF SALE

- a. **Supply of Credit.** Where a customer wishes to open a credit account, the customer must complete an official Avida credit application form before supply will be considered. The customer acknowledges that Avida may, at its own discretion, determine and change the supply on credit, including the credit amount limit, in consideration of its credit application and any other relevant factors.
- b. **Quotations and brochures.** Any quotation provided by Avida is an invitation to treat and does not constitute a contractual offer. All quotations are valid for 30 days after the date of issue and Avida may vary or withdraw a quote at any time. Avida brochures or catalogues are published as general information and are not binding on Avida.
- c. **Title and Risk.** Title in the goods delivered by Avida to the customer (Goods) passes to the customer on payment to Avida in full of all sums owing to Avida whether under this or any other agreement. Until such time, Avida has a right to call for or recover the Goods (for which purpose the customer shall permit without any objection that Avida may enter the customer's premises by its servants or agents) and the customer must deliver up the Goods to Avida. Until title to the Goods passes to the customer: i) the customer holds the Goods solely as fiduciary and bailee for Avida; ii) the customer will store the Goods separately from its own goods and those of other persons and in such manner to clearly identify the Goods as the property of Avida; and iii) subject to this clause 4 and clause 11, the customer is authorized to sell the Goods as agent, fiduciary and bailee for Avida and the entire proceeds of the sale or any other proceeds arising from the Goods or an insurance claim regarding the Goods must be held in a separate account in trust for Avida. If the customer's credit facilities are terminated, an administrator is appointed to the customer or if the customer becomes insolvent within the meaning of the Corporations Act 2001, the customer's right to sell the Goods is immediately terminated. The parties agree that these provisions apply notwithstanding any agreement, whether subject to this agreement or not, between the parties under which Avida, gives the customer credit. Risk in the goods passes from Avida to the customer at the time of delivery or collection.
- d. **Prices and GST.** Prices are subject to change without notice and Goods will be invoiced at the price ruling at the date of order. Any references to retail prices are recommendations only and there is no obligation to comply with any recommended prices. **The customer must pay Avida's invoices within 7 days of the date of Avida's invoice.** The customer agrees to pay any GST arising by reason of the performance of the obligations under this agreement. For the purposes of this clause, GST has the same meaning given to it in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999. Avida reserves the right to take the following action against any customer in breach of its credit terms: i) withhold supply and dispose of stock orders held ii) terminate credit facilities and Avida will not be liable to the customer for any loss or damage resulting directly or indirectly from such action.
- e. **Delivery.** Avida accepts no responsibility or duty for delivery but may elect to arrange delivery at its discretion without any liability and at the Customer's cost and responsibility in all things. Avida reserves the right to charge for any delivery. The Customer shall be deemed to have accepted delivery and liability for the goods immediately when Avida notifies the Customer that any goods are ready for collection or they are delivered to a carrier.
- f. **Return of Goods.** If the customer wishes to return any Goods, a return approval number must be obtained from Avida's Spare Parts department prior to any goods being returned. All claims are to reference the return approval number, original invoice number and are to include a full description detailing the reason for the return. All returned goods are to be clearly addressed to Avida Attn: Spare Parts Department. No claim will be accepted without a return approval number. All claims for credit must be made within 7 days from the date of delivery. Goods may only be returned if the goods are in the same condition in which they were delivered. All freight costs are at the customer's expense and we reserve the right to charge a handling fee of 10% unless the goods have been supplied incorrectly or are faulty. Non stock items are not returnable. Non stock items are classified as goods specifically ordered or manufactured for the customer.
- g. **Liability.** To the extent that the terms implied under the Trade Practices Act 1974 apply to the Goods or services, Avida's liability for any breach of those terms is limited to, in the case of Goods, either repairing the Goods, supplying the Goods again or paying the cost of having them supplied again and, in the case of services, either supplying the service again or paying the cost of having them supplied again. Except for those terms that cannot by law be excluded, all terms other than those expressly contained in this agreement are excluded. Avida's accumulated liability under this agreement is limited to the accumulated amount of the monies paid by the customer for the Goods for the last 6 months. Notwithstanding to the contrary herein, Avida will not be liable to the customer (whether in contract, tort including negligence or otherwise) for any consequential, special, incidental or indirect loss or damage including loss of profit or economic loss which may arise under this agreement.
- h. **Customer's Liability.** The customer indemnifies Avida against all damages, losses, costs and expenses incurred by Avida arising out of breach by the customer of this agreement or any other negligent act or omission of the customer.
- i. **Intellectual Property.** The customer agrees and acknowledges that Avida is and remains the owner of all copyright, designs, patents and trade marks used on or in relation to the Goods. The customer indemnifies Avida against all damages, costs, losses or expenses incurred by Avida arising out of the customer's infringement of Avida's intellectual property.
- 10. Insurance.** The customer must take out and maintain general third party liability insurance (including public and product insurance) to cover any insurable loss in respect of the Goods that may occur between delivery and payment.
- 11. Termination.** If the customer goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration, or fails, within 14 days after receipt of notice, to remedy a material breach of this agreement, or breaches a material provision of this agreement which is not capable of remedy, Avida may, by notice, terminate this agreement.
- 12. Force Majeure.** Avida may suspend or reduce the amount of goods to be delivered if Avida is unable to deliver the goods by reason of circumstances beyond its reasonable control including (without limitation) strikes, lockouts, accidents, war, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal force of supply, terrorism, act of God or any other order of direction of any government or government authority. If the effects of the force majeure event continue for more than 45 days, Avida may at its absolute discretion, terminate the agreement for supply of goods under these terms. The customer will have no claim against Avida for any damages, loss, costs or expenses arising from delay or cancellation from a force majeure event.
- 13. Clerical Errors.** Clerical errors are subject to correction without notification.
- 14. Inconsistency.** If there is an inconsistency between the customer's purchase order or other request and these terms of sale, these terms of sale will prevail.
- 15. Acceptance.** All orders are subject to acceptance by Avida.
- 16. Severability.** Part or all of any provision of these terms that is illegal or unenforceable may be severed from these terms and the remaining provisions of these terms continue in force.
- 17. Governing law.** This agreement is governed by laws of the State of New South Wales and the parties submit to the jurisdiction of the courts of that State.