Application for Commercial Credit Account

ashdown ingram

Office Use Only	Branch Location	Account Number	Log Number

EXEGO GROUP ENTITY:	**Ashdown-Ingram, a Division of Exego Pty Limited, ABN 97 097 993 283** **5 Viola Place, Export Park, Brisbane Airport, Queensland 4007** **Private Bag 5359, Eagle Farm BC QLD 4009** **www.ashdowningram.com.au**

DETAILS OF BUSINESS: ("APPLICANT")	☐ Sole Trader ☐ Partnership ☐ Company ☐ Trust
TRADING NAME: Choose **one** option from the following	ABN:
COMPANY NAME:	
TRUST NAME:	
NAME OF TRUSTEE:	ABN:
PARTNERSHIP NAME OF PARTNERS:	
SOLE TRADER NAME OF PROPRIETOR:	
BUSINESS ADDRESS (Full street address, not PO Box)	Postcode
POSTAL ADDRESS (if different from the business address)	Postcode
TELEPHONE:	FACSIMILE:
EMAIL:	Do you want statements sent to this email address?: Yes ☐ No ☐

IS THE BUSINESS REGISTERED FOR GST?	Yes ☐ No ☐

FULL DETAILS OF PROPRIETOR(S), PARTNER(S), DIRECTOR(S) OR TRUSTEE(S) OF THE APPLICANT

SURNAME:		DRIVERS LICENCE NO.	
GIVEN NAMES:		DATE OF BIRTH:	
TITLE/POSITION:		TELEPHONE NO.	
FULL RESIDENTIAL ADDRESS:			
PREVIOUS / CURRENT DIRECTORSHIPS:	NAME	ACN:	

SURNAME:		DRIVERS LICENCE NO.	
GIVEN NAMES:		DATE OF BIRTH:	
TITLE/POSITION:		TELEPHONE NO.	
FULL RESIDENTIAL ADDRESS:			
PREVIOUS / CURRENT DIRECTORSHIPS:	NAME	ACN:	

SURNAME:		DRIVERS LICENCE NO.	
GIVEN NAMES:		DATE OF BIRTH:	
TITLE/POSITION:		TELEPHONE NO.	
FULL RESIDENTIAL ADDRESS:			
PREVIOUS / CURRENT DIRECTORSHIPS:	NAME	ACN:	

Initial here:

Any items not properly completed may delay the processing of this application

Has the applicant or any person whose details appear above ever been bankrupt, in liquidation, in administration, in receivership, insolvent or made an arrangement with or assignment for the benefit of their creditors?	Yes ☐ No ☐
if **Yes**, please provide brief details:	
Has the applicant or any person whose details appear above, within the last 5 years, been associated with a company/trust, as a director, secretary, trustee or other office holder, which has been in liquidation, administration, receivership, or made any arrangement with or assignment for the benefit of their creditors?	Yes ☐ No ☐
if **Yes**, please provide brief details:	

TRADE REFERENCES
NOTE: Accounts for COD transactions, with accountants, etc, are not acceptable

1	SUPPLIER NAME:	
	TELEPHONE NO:	CONTACT PERSON:
2	SUPPLIER NAME:	
	TELEPHONE NO:	CONTACT PERSON:
3	SUPPLIER NAME:	
	TELEPHONE NO:	CONTACT PERSON:

GENERAL INFORMATION

CONTACT NAME:	
TELEPHONE NO:	DATE BUSINESS COMMENCED:
PREVIOUS BUSINESS NAME/S (if changed in the last 2 years):	
ESTIMATED VALUE OF MONTHLY PURCHASES:	$

HAS CUSTOMER AN EXISTING ACCOUNT:	Yes ☐ No ☐	PURCHASE ORDER REQUIRED:	Yes ☐ No ☐
INFORMATION SUPPLIED BY:	.....		
DATE:	.....	LOCATION:	

IN THE CASE OF COMPANY (INCLUDING A TRUST WHERE THE TRUSTEE IS A COMPANY), ALL DIRECTORS MUST SIGN AND HAVE WITNESSED THE PERSONAL GUARANTEE AND INDEMNITY.

Initial here:

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ACKNOWLEDGMENT BY APPLICANT

The Applicant acknowledges that:

1. The attached Terms and Conditions of Supply are incorporated into every contract for supply of goods and services by Ashdown-Ingram to the Applicant, and each supply is subject to the Terms and Conditions of Supply unless the parties agree otherwise in writing.
2. The credit for which the Applicant applies will be used wholly for business purposes.
3. Ashdown-Ingram may:
   a) obtain credit reports from credit reporting agencies or other credit providers for the purpose of assessing this Credit Application and any other application which the Applicant makes for credit or to collect overdue payments, which reports may contain personal information of the Applicant and any guarantor;
   b) obtain information from any other credit providers from time to time for the purpose of reviewing and assessing the Applicant's and any guarantor's commercial creditworthiness or collecting overdue payments; and
   c) disclose to, exchange with 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 the Applicant or any guarantor, any personal information maintained or in Ashdown-Ingram's possession relating to this Credit Application and the administration of the Applicant's credit account; this may include information about the Applicant's or any guarantor's credit worthiness, credit standing, credit history, credit capacity that credit providers are allowed to give or receive, or credit defaults.
4. The authorisations contained in this Credit Application will continue to remain in full force and effect until all credit accounts cease to be made available and all amounts owing to Ashdown-Ingram are paid in full.
5. In the event that this Credit Application is approved by Ashdown-Ingram in its discretion:
   a) Ashdown-Ingram will extend credit to the Applicant up to the approved credit limit;
   b) credit terms are strictly 30 day payment;
   c) Ashdown-Ingram may terminate the credit account immediately without notice if an Event of Default (as defined in the attached Terms and Conditions of Supply) occurs; and
   d) on termination of the credit account, all amounts owing to Ashdown-Ingram are due and payable in full immediately.
6. The Applicant undertakes to advise Ashdown-Ingram by registered post within 7 days of any actual or proposed change in:
   a) the address of the business and the address at which any goods supplied to the Applicant will be located (if it differs to the business address);
   b) the trading name of the Applicant's business;
   c) the person(s), the directors, the trustee or the partnership conducting the Applicant's business;
   d) he ownership or structure of the Applicant's business (for example, if the business is converted into a trust or company or is sold); and
   e) the status, or details of, the Customer's registration for GST purposes or Australian Business Number.

   Where such a change occurs Ashdown-Ingram may require a new Credit Application to be made for Ashdown-Ingram's approval and the Applicant will sign all documents and do all acts and things appropriate to such new Credit Application.
7. This Credit Application will be scanned as an image and the image will be stored electronically. A printout of an image retrieved from the relevant mode of electronic storage and certified by an employee of Ashdown-Ingram as being a true copy is conclusive evidence of this Credit Application.
8. If the Applicant is a trustee, it enters into this Credit Application and any contract with Ashdown-Ingram on its own behalf and as trustee of the trust, and it warrants that it has power to enter into this Credit Application and any contract Ashdown-Ingram and perform its obligations under them, and that it has a right of indemnity from the trust assets, and that there is no restriction on this right of indemnity and the Applicant undertakes that no such restriction will be created while this Credit Application or any contract with Ashdown-Ingram is in force.
9. Ashdown-Ingram may assign its rights under this Credit Application and/or the attached Guarantee and Indemnity, without the prior consent or knowledge of the Guarantor. In this event, this Guarantee will remain in full force and effect in relation to indebtedness incurred by the Customer to Ashdown-Ingram (or its assignee) both before and after the date of that assignment. A reference to Ashdown-Ingram in this clause includes its assignee or successor.

By signing this Credit Application, I acknowledge that I have read and understood (i) this Application For Commercial Credit Account, (ii) the above Acknowledgment, and (iii) the attached Terms and Conditions of Supply, and I agree to be bound by them, and I warrant to Ashdown-Ingram that the information contained in this Application For Commercial Credit Account is correct and acknowledge that Ashdown-Ingram relies on that information in granting credit to me.

DATED this day of in the year

Director/Partner/Proprietor/Trustee (Name) Signature

Director/Partner/Proprietor/Trustee (Name) Signature

Director/Partner/Proprietor/Trustee (Name) Signature

In the presence of

Witness Name Witness Signature

Witness Address

Signature Guide:

If the applicant is a company – this should be signed by 2 directors, or a director + a secretary.

If the Applicant is a partnership – this should be signed by at least 1 partner.

If the Applicant is a trust – this should be signed by the trustee. If the trustee is a company, this should be signed by 2 directors, or a director + a secretary.

If Applicant is a sole trader – this should be signed by the proprietor.

IN THE CASE OF A COMPANY (INCLUDING A TRUST WHERE THE TRUSTEE IS A COMPANY), ALL DIRECTORS MUST SIGN AND HAVE WITNESSED THE PERSONAL GUARANTEE AND INDEMNITY ON THE FOLLOWING PAGE.

Any items not properly completed may delay the processing of this application

PERSONAL GUARANTEE AND INDEMNITY ("GUARANTEE")

In consideration of Exego Pty Limited ABN 97 097 993 283 trading as Ashdown-Ingram ("**Ashdown-Ingram**") agreeing to supply or continuing to supply goods and services on credit to the Applicant which makes the attached Application for Commercial Credit Account ("**Customer**"), each Guarantor whose details and signature are set out in the Schedule ("**Guarantor**") agrees as follows:

1. The Guarantor unconditionally and irrevocably guarantees to Ashdown-Ingram the due and punctual payment of all debts and monetary liabilities, including without limitation costs and expenses, which are or may become, owing or payable by the Customer to Ashdown-Ingram on any account and in any capacity ("**Guaranteed Moneys**").
2. As a separate and independent obligation the Guarantor agrees to indemnify, and keep fully indemnified, Ashdown-Ingram from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by Ashdown-Ingram in relation to the non-payment or non-recovery of the Guaranteed Moneys for any reason or the enforcement of this Guarantee.
3. This Guarantee is a continuing obligation of the Guarantor.
4. The Guarantor's obligations under this Guarantee are principal obligations and are not released, discharged or otherwise affected by anything which, but for this provision, might have that effect, including without limitation:
   a) any other guarantee or any security or instrument which Ashdown-Ingram may hold in respect of any Guaranteed Moneys or any judgment obtained by Ashdown-Ingram or any release, discharge, surrender or modification of, or dealing with, any such guarantee, security, instrument or judgment;
   b) any arrangement with, or release of, the Customer or any Guarantor or person by Ashdown-Ingram or by operation of law;
   c) the fact that any of the Guaranteed Moneys are irrecoverable for any reason;
   d) any change in the membership of or termination of any partnership or firm of which the Customer or the Guarantor is a member, or the death, liquidation or bankruptcy of the Customer or the Guarantor, or the assent of Ashdown-Ingram to any composition, arrangement, or scheme in respect of the Customer, or the acceptance by Ashdown-Ingram of any dividend or sum of money under it;
   e) the failure of any other person named as a party to execute this Guarantee;
   f) any variation of the terms on which the goods or services are supplied to, or paid for by, the Customer;
   g) any claim the Customer may have against Ashdown-Ingram;
   h) any act or omission by Ashdown-Ingram or any related body corporate which may result in prejudice to the Customer;
   i) the fact that any credit was provided by Ashdown-Ingram before this Guarantee was signed;
   j) the granting of any time, waiver, credit, indulgence, concession to, composition with, release or discharge by novation of, any person by Ashdown-Ingram;
   k) the assignment, novation, transfer or assumption of, or other dealing with, any rights or obligations under this Guarantee or any other document.
5. Until Ashdown-Ingram has received all the Guaranteed Moneys;
   a) the Guarantor may not, without Ashdown-Ingram's consent, (i) reduce its liability under this Guarantee by claiming that it or the Customer or any other person has a right of set-off or counterclaim against Ashdown-Ingram, (ii) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, or encumbrance that secures amounts including the Guaranteed Money, (iii) claim an amount on any account in the event of the bankruptcy or other administration of the Customer's or another guarantor's estate or any winding up or scheme of arrangement of the Customer or another guarantor, or (iv) enforce any security held by the Guarantor in respect of the Customer or another guarantor, and the Guarantor will hold any such debt, liability or security, and any rights or benefits in respect of it, on trust for Ashdown-Ingram;
   b) if requested by Ashdown-Ingram, the Guarantor will lodge a proof of debt or similar claim in any such bankruptcy, administration, winding up or scheme of arrangement and enforce any such security and will execute all documents and do all things as Ashdown-Ingram may require from time to time to enable Ashdown-Ingram to have and receive the benefit of or arising from any such proof, claim or security;
   c) the Guarantor is not subrogated to Ashdown-Ingram; and
   d) the Guarantor's liability under this Guarantee is that of principal debtor, and the Guarantor waives any of its rights as surety which may at any time be inconsistent with this.
6. A certificate issued by Ashdown-Ingram stating the amount of moneys owed by the Customer or the Guarantor to Ashdown-Ingram is conclusive evidence of the amount owing
7. Ashdown-Ingram may give the Customer credit in the amount which Ashdown-Ingram approves in its discretion which may be more credit than the Customer has asked for in the attached Application for Commercial Credit Account. Ashdown-Ingram is not required to inform the Guarantor of the amount of credit given to the Customer at any time.
8. No payment operates to discharge or reduce a liability of the Guarantor if the payment is or becomes voidable under any law relating to bankruptcy, winding up or insolvency, and no discharge or release consequent on such payment operates to discharge the liability of the Guarantor under this Guarantee.
9. The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the stamping, registration and discharge of this Guarantee.
10. All payments which the Guarantor is required to make under this Guarantee must be made on demand, without set-off, counterclaim or deduction.
11. Any demand or notice may be served on the Guarantor by delivering it to the Guarantor personally or by sending it by post to the Guarantor's last known address.
12. If a provision of this Guarantee is rendered ineffective by operation of law in any jurisdiction, that provision may be severed in respect of that jurisdiction without affecting the validity and enforceability of the other provisions of this Guarantee, or the validity and enforceability of that provision in other jurisdictions.
13. Ashdown-Ingram may assign its rights under the Application for Commercial Credit Account and this Guarantee, without the prior consent or knowledge of the Guarantor. In this event, this Guarantee will remain in full force and effect in relation to indebtedness incurred by the Customer to Ashdown-Ingram (or its assignee) both before and after the date of that assignment. A reference to Ashdown-Ingram in this clause includes its assignee or successor.
14. This Guarantee is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Victorian courts.
15. In this Guarantee, "Guarantor" means all persons who are Guarantors jointly and each person who is a Guarantor severally. This Guarantee is a valid, binding and enforceable deed as regards each person who executes it, notwithstanding that any proposed or contemplated party has not executed it.
16. In this Guarantee, unless the contrary intention appears words denoting the singular including the plural (and vice versa); references to a person include bodies corporate; and references to a party include its successors and permitted assigns.
17. **The Guarantor acknowledges that:**
    a) **the Guarantor has signed this Guarantee voluntarily;**
    b) **the Guarantor understands the nature and effect of this Guarantee – in particular that the Guarantor has agreed to guarantee all amounts presently owed by the Customer to Ashdown-Ingram and all amounts that the Customer may in the future owe to Ashdown-Ingram and has also agreed, as a separate and independent obligation, to provide an indemnity to Ashdown-Ingram in the event that any of the Guaranteed Moneys are not paid to, or recovered by, Ashdown-Ingram; and**
    c) **before entering into this Guarantee, the Guarantor had the opportunity to consult and receive advice from a legal adviser independent of Ashdown-Ingram as to the purport, effect and consequences of, and obligations created by, this Guarantee; and**
    d) **it has not entered into this Guarantee in reliance on any representation, warranty, promise or statement of Ashdown-Ingram or any person on behalf of Ashdown-Ingram.**
18. **The Guarantor acknowledges that it has read, understood and agrees to paragraph 3 in the attached Acknowledgment to the Application for Commercial Credit Account (which relates to privacy consent).**

Initial here:

Any items not properly completed may delay the processing of this application

DATED this day of in the year

PERSONAL GUARANTEE AND INDEMNITY ("GUARANTEE") Page 2 of 2

EXECUTED AS A DEED

The Guarantor(s)

Full Name: ----------	In the presence of
Address ----------	

----------	----------
Signature	Witness

Full Name: ----------	In the presence of
Address ----------	

----------	----------
Signature	Witness

Full Name: ----------	In the presence of
Address ----------	

----------	----------
Signature	Witness

Full Name: ----------	In the presence of
Address ----------	

----------	----------
Signature	Witness

(the witness should be an independent third party)

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PAYMENT OPTIONS

ELECTRONIC FUNDS TRANSFER (INTERNET)

National Australia Bank, Brisbane Office

ACCOUNT NAME	ASHDOWN INGRAM
BSB	084 004
ACCOUNT#	53467 7155

YOU MUST ENTER YOUR 7 DIGIT CUSTOMER NUMBER IN THE REFERENCE/DESCRIPTION FIELD TO AVOID ANY DELAYS IN ALLOCATION OF PAYMENT. You can transfer funds immediately or schedule the transfer for a later date. Send your remittance advice via fax to 07 3358 9419 or E-Mail accounts@ashdown-ingram.com.au

BY MAIL
Detach the payment slip from the bottom of your statement and return it together with your cheque to the address shown on the top of your statement.

IN PERSON
Present your payment slip at any branch location to make payment by cheque, cash or Credit Card

CUSTOMER INFORMATION

Should you wish to contact Ashdown-Ingram concerning any aspect of your credit account, including payment assistance, copy invoice or statement, moving address or changing customer details our contact details are as follows:

Phone 07 3358 9400 (8am – 5pm Monday – Friday);
Fax 07 3358 9419;
E-Mail accounts@ashdown-ingram.com.au;
Mail to Ashdown-Ingram Private Bag 5359, Eagle Farm B.C QLD 4009.

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Office Use Only

To ensure accurate account set up, complete and forward to the Credit Department

(fax 07 3358 9419; E-Mail accounts@ashdown-ingram.com.au)

Store Sales Information

CUSTOMER NAME: _____

SALES PERSON: [ ] [ ]
(Ace store No.)

The fist 3 characters should be the ACE location number the last 2 should be the salespersons sub territory number
00 – no call 01 – Representatives call

CUSTOMER TYPE: ☐ Metro Customer ☐ Country Customer

CLASSIFICATION: [ ] [ ] [ ] [ ]

The classification number to be assigned to the customer

REGION: [ ] [ ] [ ] [ ]

NSW/ACT 2000, VIC/TAS/SA 3000, SEQLD/NT 4000, NTHQLD 4500, CAR COOLING 4800, ACTON 4900, WA 6000

CUSTOMER PRICE PROFILE: [ ] [ ] [ ] [ ] [ ]

The price pointer to be assigned to the customer
(Authorised by Regional or Sales Manager)

PRICE LISTS: [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

Office Use Only

		Branch Location	_____
Account Number	_____	Company / Division	_____
Date approved:	_____	Credit Manager	_____
Approved Credit Limit:	$ _____	Approved Order Limits:	$ _____
Comments	_____		
	_____		

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TERMS AND CONDITIONS OF SUPPLY

1. Interpretation

1.1 In these terms and conditions, these meanings apply unless the contrary intention appears:
"**Australian Consumer Law"** means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).
"Contract" means a contract for the supply of Goods and/or Services by Ashdown-Ingram to the Customer.
"Customer" means any natural person, company, partnership or other entity which enters into a Contract with Ashdown-Ingram.
"Goods" means all present and after-acquired automotive parts and accessories supplied by Ashdown-Ingram to the Customer under a Contract.
"**Price**" means the amount in Australian dollars, inclusive of any GST, payable by the Customer to Ashdown-Ingram in respect of the supply of Goods or Services, including any charges for delivery, freight and transportation.
"Services" means the services supplied by Ashdown-Ingram to the Customer under a Contract.

1.2 In these terms and conditions:
(a) a reference to a document (including these terms and conditions) includes any variation or replacement of it;
(b) the singular includes the plural and vice versa;
(c) a reference to a person (including a party to a Contract) includes a firm, a body corporate, an unincorporated association or an authority, and includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
(d) a reference to any legislation or to any provision of any legislation includes any enactment, modification, consolidation or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and
(e) headings are inserted for convenience and do not affect interpretation of these terms and conditions.

2. Formation of Contract

2.1 A Contract is entered into between Ashdown-Ingram and the Customer when Ashdown-Ingram accepts, either in writing or by conduct, an order which a Customer places for Goods and or Services.

2.2 These terms and conditions are incorporated into each Contract.

2.3 A Contract constitutes the only agreement governing the supply of the Goods and Services to which it relates, and supersedes all previous communications and negotiations and agreements in connection with the supply of those Goods and Services.

2.4 Except as specifically provided in these terms and conditions, any terms in respect of the supply of Goods and Services contained in or relating to any other documents, including any of the Customer's documents (even if they purport to provide that they prevail), are excluded. By accepting the Goods and Services, the Customer acknowledges that these terms and conditions prevail over any qualification or condition purported to be imposed in any such other documents.

2.5 Ashdown-Ingram may vary these terms and conditions from time to time by providing to the Customer reasonable notice of the variation, and the varied terms and conditions are incorporated into each Contract after such notice.

3. Payment

3.1 Unless otherwise agreed by Ashdown-Ingram in writing, payment of the Price must be made within 30 days of the day on which the Goods and Services are supplied. Time is of the essence in relation to punctual payment.

3.2 Payments must be made in immediately available funds, without set-off, counterclaim or deduction.

3.3 If payment is not made by the due date, the amount due for payment attracts interest from the due date until payment, at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic), calculated daily and compounding monthly.

3.4 The Customer charges all of its property, both real and personal, with the amount of any indebtedness to Ashdown-Ingram, and the charge is separate and distinct from the reservation of title to the Goods referred to in clause 5 below.

4. Supply and Delivery

4.1 Ashdown-Ingram may:
(a) accept or decline any order in whole or in part;
(b) if Ashdown-Ingram has at any time reasonable doubts as to the solvency of the Customer, agree to accept any order only on conditions stipulated by Ashdown-Ingram; or
(c) withhold supply of any Goods or Services.

4.2 Ashdown-Ingram may deliver any Goods or Services to the Customer by instalments and this does not entitle the Customer:
(a) to terminate or cancel a Contract; or
(b) to claim any loss or damage howsoever arising.

4.3 The Customer is liable to pay Ashdown-Ingram any charges for delivery, freight and transportation, and such payment must be made as part of the Price.

4.4 Delivery of the Goods and Services will take place at Ashdown-Ingram's premises. In the event that Ashdown-Ingram agrees to supply the Goods or Services to the Customer at the Customer's address or to some other place nominated by the Customer, Ashdown-Ingram is deemed to be a common carrier and Ashdown-Ingram is not liable, whether in tort or contract or otherwise, for any loss or damage to or deterioration of the Goods or for misdelivery or failure to deliver, or delay in delivery or for any other loss or damage suffered by the Customer whether caused by the negligence or wilful misconduct of Ashdown-Ingram or by any other cause whatsoever, including (but not limited to) any act of God, flood, fire, lightning, storm, tempest, rain, enemy hostilities, strikes, lock-out or other industrial disturbances, riots, laws, rules or regulations, inability to obtain equipment or material or any other cause outside the control of Ashdown-Ingram. If Ashdown-Ingram enters into the Customer's premises to make supply of Goods or Services, the Customer releases Ashdown-Ingram from claims for damage to the premises or personal injury. Further, the Customer indemnifies Ashdown-Ingram against any loss, damage or expense suffered or incurred by Ashdown-Ingram relating to damage to a third party's premises or personal injury in making supply of Goods or Services to the Customer, except where Ashdown-Ingram is negligent.

5. Ownership and risk

5.1 Legal and beneficial title to the Goods is retained by Ashdown-Ingram and does not pass to the Customer, and the Customer holds the Goods as Ashdown-Ingram's fiduciary, agent and bailee, until the Customer pays Ashdown-Ingram in full all moneys owing or payable by the Customer to Ashdown-Ingram on any account (including in respect of the purchase of the Goods) and any payments have been cleared, at which time title to the Goods will pass to the Customer.

5.2 Until the payments are received by Ashdown-Ingram and title to the Goods has passed to the Customer in accordance with clause 5.1 above:
(a) the Customer has custody of the Goods and holds them as fiduciary, agent and bailee of Ashdown-Ingram;
(b) the Customer must not encumber the Goods in any way;
(c) the Customer may sell the Goods but only at arm's length, in the ordinary course of business, on market terms, and only as the fiduciary, agent and bailee of Ashdown-Ingram (and in that regard, the Customer has no right to bind Ashdown-Ingram to any liability to a third party by contract or otherwise);
(d) Ashdown-Ingram may inspect the Goods; and
(e) if an Event of Default occurs, Ashdown-Ingram may repossess the Goods and resell them and apply the proceeds of sale to any amount owing or payable by the Customer to Ashdown-Ingram on any account and return any excess proceeds of sale to the Customer (without prejudice to any other rights of Ashdown-Ingram).

5.3 For the purposes of enabling Ashdown-Ingram to inspect the Goods or retake possession of the Goods, Ashdown-Ingram and its representatives are irrevocably authorised to enter (forcibly, if necessary) into any premises owned or occupied by the Customer on or in which the Goods may be located from time to time, and to recover and do all things necessary to recover the Goods, and the Customer appoints Ashdown-Ingram as its agent to enter any premises not owned by the Customer and on or in which the Goods may be located from time to time.

5.4 The Customer:
(a) agrees that Ashdown-Ingram is not liable for any loss, damage, expense or cost whatsoever suffered or incurred by the Customer as a result of Ashdown-Ingram or its agents exercising the powers conferred on Ashdown-Ingram under clause 5.3 above; and
(b) releases Ashdown-Ingram and its agents from any claim or action whatsoever if Ashdown-Ingram takes possession of goods owned by the Customer

in the reasonable belief that such goods are the Goods. Upon receipt of evidence from the Customer which satisfies Ashdown-Ingram that the relevant goods are not the Goods, Ashdown-Ingram shall make the goods available for collection by the Customer.

5.5 Notwithstanding clauses 5.1 and 5.2 above, the Goods are at the sole risk of the Customer from the time the Goods are delivered to the Customer or its agent. The Customer must properly store, secure and insure the Goods from such time as the Goods are at the Customer's risk.

5.6 Where the Goods are part of a product line that is also comprised of goods that are owned by the Customer (for example, because other suppliers also supply the Customer with that product line) the Customer will not deal with the Goods in any way that is inconsistent with Ashdown-Ingram's ownership of the Goods and acknowledges the applicability of the following legal principles if, at the time when Ashdown-Ingram seeks to recover the Goods, the Goods have nevertheless been commingled with other goods in the same product line -

(a) if there is sufficient stock of the product line to satisfy in full the interests of both Ashdown-Ingram and the Customer, Ashdown-Ingram and the Customer are tenants in common of the stock in that product line in portion to their respective contributions; or

(b) if the residual stock of the product line is insufficient to satisfy in full the interests of both Ashdown-Ingram and the Customer, as an incident of the Customer's obligations as fiduciary, agent and bailee of the Goods, the Customer is presumed to have disposed of that part of the product line that is comprised of its own goods prior to disposing of the Goods.

5.7 The Customer waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

6. Customer's warranties

6.1 By entering into a Contract, the Customer warrants that:

(a) it does not rely on the skill or judgment of Ashdown-Ingram as to the suitability of any Goods or Services for a particular purpose, unless Ashdown-Ingram acknowledges in writing that the Goods or Services are fit for a particular purpose; and

(b) 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 Goods and not so as to constitute a sale by sample or a sale by description, nor does Ashdown-Ingram warrant or agree that the bulk of the Goods sold conform with any such sample or description.

7. Customer's default

7.1 If:

(a) the Customer does not pay an amount owing to Ashdown-Ingram when due in the manner required;

(b) the Customer breaches any term of a Contract or of the Application for Commercial Credit Account;

(c) any representation or warranty made by the Customer to Ashdown-Ingram is not true when made;

(d) the Customer disposes of, or threatens to dispose of, its assets other than in the ordinary course of business;

(e) the Customer or any of its officers is or becomes insolvent, bankrupt, in liquidation, in administration, or makes any arrangement with or assignment for the benefit of its creditors, or has a receiver or receiver and manager or similar officer appointed in respect of any of its property; or,

(f) any of the matters set out in paragraph (d) above is likely to happen in the opinion of Ashdown-Ingram's Credit Manager or equivalent officer,

(each an "**Event of Default"**), then Ashdown-Ingram may do one or more of the following:

(g) require immediate payment of all amounts owing by the Customer to Ashdown-Ingram;

(h) immediately without notice take any steps to repossess the Goods and resell them under clause 5 above;

(i) immediately without notice terminate any Contract between Ashdown-Ingram and the Customer and any credit facility extended to the Customer;

(j) charge the Customer interest on any amount owing by the Customer to Ashdown-Ingram at the rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic), calculating daily and compounding monthly, from the due date until the date of payment in full;

(k) add to the Customer's account and require immediate payment of all expenses incurred as a consequence of the actions taken by Ashdown-Ingram to recover amounts owing by the Customer to Ashdown-Ingram; and

(l) charge a monthly service fee of $2.20 (inclusive of GST) on account statements and add to the Customer's account that charge together with all charges incurred by Ashdown-Ingram in respect of any cheques not met upon presentation.

7.2 A certificate signed by the Credit Manager of Ashdown-Ingram stating the amount owing by the Customer to Ashdown-Ingram is conclusive evidence of the Customer's indebtedness to Ashdown-Ingram in that amount.

7.3 Termination of a Contract or of a credit facility does not affect any accrued rights.

8. Indemnity

The Customer agrees to indemnify and keep indemnified Ashdown-Ingram from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from:

(a) the Goods or Services or their use;

(b) any advice given by Ashdown-Ingram to the Customer; and

(c) any breach by the Customer of a Contract.

9. Returns and faulty Goods

9.1 Any claim against Ashdown-Ingram must be made within 7 days of delivery of the Goods, except claims relating to non-delivery, which must be made in writing within 14 days of the date of the invoice. No claim may be made outside this period. All claims must refer to the invoice number and date and state the reason for the claim.

9.2 Where Ashdown-Ingram makes Goods to the Customer's specification, the Customer acknowledges that:

(a) Ashdown-Ingram makes no representation to the Customer in relation to the suitability of the specification or Goods for any disclosed purpose; and

(b) Customer will indemnify Ashdown-Ingram in respect of any loss or damage where that loss or damage is caused by the Customer's specifications; and

(c) Customer will indemnify Ashdown-Ingram in respect of any loss or damage if Ashdown-Ingram infringes a third party's rights in using the specification.

9.3 The following Goods cannot be returned for credit: Goods specially cut to length; Goods specifically made, plated or otherwise treated or purchased for the Customer; or Goods damaged or altered by the Customer or the Customer's customer.

9.4 If Ashdown-Ingram elects to accept any of the returned Goods, the acceptance is on such terms as Ashdown-Ingram may determine (which may or may not involve a credit), and a re-stocking fee of not less than 5% of invoice value (inclusive of GST) shall apply. Ashdown-Ingram may refuse to accept any returns or replace unused Goods.

9.6 Ashdown-Ingram is not liable for any loss arising as a result of Ashdown-Ingram's failure to give credit or its delay in doing so.

9.7 Goods returned are at the Customer's expense, and the Customer must pay all freight charges for the return of the Goods.

9.8 Goods returned must have been purchased from Ashdown-Ingram, be in original packaging and saleable condition and the relevant invoice number supplied.

9.9 The provisions and tolerances contained in the standard specification to which Ashdown-Ingram or its suppliers manufacture the Goods apply to all orders accepted, unless the parties agree to the contrary in writing.

9.10 If Ashdown-Ingram accepts a deposit from the Customer in relation to the supply of "Core" goods, then when the Customer returns the "Core" goods to which the deposit relates ("**Core Return**"), unless otherwise agreed in writing:

(a) the Customer represents and warrants that it has title to the Core Return and it is registered for the purposes of GST;

(b) title to the Core Return passes to Ashdown-Ingram when the Customer delivers it to Ashdown-Ingram;

(c) Ashdown-Ingram may issue to the Customer a Recipient Created Tax Invoice for the purposes of GST, within 28 days of Ashdown-Ingram's receipt of the Core Return or determination of the value of the Core Return (whichever is the latter); and

(d) the Customer will not issue a tax invoice in respect of any supply to Ashdown-Ingram associated with that Core Return.

10. Exclusion and limitation of liability

10.1 Nothing in these terms and conditions operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

(a) contravene that statute; or

(b) cause any term of these terms and conditions or a Contract to be void,

("**Non-excludable Obligation**").

10.2 Except in relation to Non-excludable Obligations, Ashdown-Ingram expressly excludes all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute.

10.3 Except in relation to Non-excludable Obligations:

(a) Ashdown-Ingram is not liable to the Customer or any other person for any direct or indirect loss, including without limitation consequential loss, damage to persons or property, and death or injury, caused by any act or omission, including without limitation negligent acts or omissions of Ashdown-Ingram or of Ashdown-Ingram's employees, servants or agents, except for any liability which cannot be excluded by law. In this clause, "consequential loss" includes, without limitation, 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. The Customer indemnifies Ashdown-Ingram against any claims made against Ashdown-Ingram by any third party in respect of any such loss; and

(b) Ashdown-Ingram's total liability to the Customer is limited to the lowest of the total Price paid by the Customer for the Products the subject of the claim; or the Price payable under the Contract the subject of the claim; and the Price paid by the Customer in the 30 days preceding the relevant cause of action arising.

10.4 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Ashdown-Ingram's liability is not limited under these terms and conditions), Ashdown-Ingram's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:

(a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and

(b) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.

10.5 Every exclusion or exemption from liability and every right, defence and immunity of whatsoever nature applicable to Ashdown-Ingram or to which Ashdown-Ingram is entitled under this clause 10 is also available and extends to protect every employee or agent of Ashdown-Ingram (including every independent contractor from time to time engaged by Ashdown-Ingram) while acting in the course of or in connection with his employment or engagement, and for these purposes Ashdown-Ingram is deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its employees or agents from time to time (including independent contractors) and all such persons are to that extent deemed be parties to the Contract.

10.6 The provisions of this clause 10 survive the termination of a Contract.

11. Changes to Customer's business

The Customer undertakes to advise Ashdown-Ingram by registered post within 7 days of any actual or proposed change in:-

(a) the address of the business and the address at which the Goods will be located (if it differs to the business address);

(b) the trading name of the Customer's business;

(c) the person(s), the directors, the trustee or the partnership conducting the Customer's business; and

(d) the ownership or structure of the Customer's business (for example, if the business is converted into a trust or company or is sold); or

(e) the status, or details of, the Customer's registration for GST purposes or Australian Business Number.

Where such a change occurs Ashdown-Ingram may require a new application for a credit account to be made for Ashdown-Ingram's approval and the Customer will sign all documents and do all acts and things appropriate to such new application for a credit account.

12. Notices

All notices between Ashdown-Ingram and the Customer are deemed to have been delivered if mailed in the ordinary course of post or sent by facsimile to the last known address or facsimile number of Ashdown-Ingram or the Customer respectively. Notices are deemed to have been delivered two (2) days after mailing, or upon completion of a facsimile transmission.

13. Governing law, jurisdiction and service of process

13.1 Each Contract is governed by the law of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and the federal courts of Australia.

13.2 Without preventing any other mode of service, any document in a proceeding may be served on a party by delivering it or leaving it for the party at its last notified address.

14. General

14.1 Any of Ashdown-Ingram's rights under a Contract can be waived by Ashdown-Ingram only in writing. The waiver by Ashdown-Ingram of any breach by the Customer of any term of a Contract does not prevent the subsequent enforcement of that term and is not be deemed a waiver of any other or subsequent breach.

14.2 Subject to clause 2.5 above, a Contract may not be amended, modified or varied except in writing signed by both parties.

14.3 Ashdown-Ingram may exercise a right, remedy or power under or in connection with a Contract in any way Ashdown-Ingram consider appropriate in its absolute discretion.

14.4 If Ashdown-Ingram does not exercise a right, remedy or power at any time, this does not mean that Ashdown-Ingram cannot exercise it later.

14.5 Ashdown-Ingram's rights, remedies and powers under a Contract are in addition to any rights, remedies and powers provided by law.

14.6 The Customer agrees to do comply with all Ashdown-Ingram's reasonable requests in order to bind the Customer under a Contract and to show whether the Customer is complying with its obligations under a Contract.

14.7 If a term of a Contract (including these terms and conditions) is held to be void, voidable, invalid or unenforceable in whole or in part, it may be severed without affecting the validity and enforceability of the remaining terms.

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