

# Application for Commercial Credit

Sparky Warehouse Australia Pty. Ltd. A.C.N. 636 536 082

Thank you for choosing Sparky Warehouse Australia as your supplier. Please complete all relevant credit details, ensuring the application is signed on Page 5, and

Mail To:

PO BOX 5068 Garden City Vic 3207

Or

E-mail: <a href="mailto:sales@sparkywarehouse.com.au">sales@sparkywarehouse.com.au</a>

Should you have any difficulties and require assistance, please call:

+61 3 9676 6069

TYPE OF BUSINESS (PLEASE TICK)	COMPANY DETAILS			
1	REGISTERED NAME (LEGAL ENTITY)			
PUBLIC COMPANY !				
PRIVATE COMPANY .	TRADING NAME (IF DIFFERENT)			
TRUST !				
PARTNERSHIP !				
	LE TRADER ! REGISTERED COMPANY NUMBER			
DATE OF BIRTH	TELEPHONE NUMBER			
PRINCIPAL(S) NAME(S):	EMAIL			
1				
2				
3				
4				
MAILING ADDRESS FOR ACCOUNTS				
DELIVERY APPRECS (IF DIFFERENT)				
DELIVERY ADDRESS (IF DIFFERENT)				
DIRECTOR'S NAMES				
1				
2				
3				
ł				
CONTACT FOR SALES				
NAME				
PHONE				
EMAIL				
CONTACT FOR ACCOUNTS				
NAME				
PHONE				
EMAIL				

ANY SPECIAL REQUIREMENTS WITH REGARD TO INVOICE PROC	EDURE AND / OR DELIVERY REQUIREMENTS?		
ANY SPECIAL REQUIREMENTS WITH REGARD TO DESPATCH OF	GOODS OR SERVICES? (EG. CARRIER OR DE	ELIVERY TIMES)	
CREDIT DETAILS	PREMISES (PLE	PREMISES (PLEASE TICK)	
ESTIMATED MONTHLY PURCHASES	own !		
CREDIT LIMIT REQUESTED	RENT !		
FINANCIAL INFORMATION			
SALES TURNOVER			
NUMBER OF EMPLOYEES			
NET ASSETS			
INDUSTRY TYPE			
NATURE OF BUSINESS			
BANK NAME			
BRANCH ADDRESS_			
BANK CODE & NUMBER			
TRADE REFERENCES (Please provide four references as some comp	panies may not allow trade references to be given)		
1. CONTACT	PHONE:	EMAIL :	
2. CONTACT	PHONE:	EMAIL:	
3. CONTACT	PHONE:	EMAIL :	
4. CONTACT	PHONE :	EMAIL :	

"Agreement" means these terms and conditions and other documents referred in them

The "Company" means Sparky Warehouse Australia Ptv Ltd.

The "Customer" means the company/partnership/sole trader who is applying for the credit line facility

"I". "We". 'Us" "Our" means the Company.

"You", "Your" means the Customer.

"Goods" means Goods supplied by the Company (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods and Hired Equipment and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.

"Guarantor" means the person(s), or entity, that guarantees this Agreement including the signatory of this Agreement personally.

"Hired Equipment" means equipment hired out or loaned by the Company to the Customer.

"PPSA" means the Personal Property Securities Act 2009 (Cth) and related regulations

"Services" means all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined

### 1. TRADING TERMS

- 1.1 Any instructions received by the Company from the Customer for the supply of Goods or Services and/or the Customer's acceptance of Goods or Services supplied by the Company shall constitute acceptance of this Agreement.
- 1.2 Where more than one Customer has entered into this Agreement the Customers shall be jointly and severally liable for all
- 1.3 Upon acceptance of this Agreement by the Customer the Agreement is binding and can only be amended with the written consent of the Company
- 1.4 Where you place an order which contains terms and conditions 7. OWNERSHIP & RISKS inconsistent with this Agreement, this Agreement shall apply to that 7.1

# 2. PAYMENT TERMS

- 2.1 Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which the Goods were delivered or Services given to the Customer, his carrier or agent. Time shall be of the essence
- 2.2 The Company may at its discretion offer a discount for early settlement of invoices owing. The Customer may take advantage of any settlement discount which may be offered only if payment in full takes place, within the terms specified on the invoice, and no other invoice amounts are outstanding beyond their dates at that time.

# CREDIT POLICY CONDITIONS

Credit account facilities may be withdrawn at any time at the discretion of the Company without prior notice being given in which event the full amount owing by the Customer to the Company becomes immediately due and payable.

### 4. PRODUCT AVAILABILITY

Any date quoted for delivery is an estimate only and unless a quarantee has been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date, the Company shall not be liable to the Customer for any loss or damage however arising even if arising out of the negligence of the Company for failure to deliver on or before the quoted date.

### 5. QUANTITIES ORDERED

Any estimates the Company may have given of Goods or Services required for a particular job will be without obligation and the Customer will be responsible for ascertaining the proper quantities to be ordered.

# 6. HIRED EQUIPMENT

6.1 In relation to any Hired Equipment:

- (a) You acknowledge that ownership and/or title to the Hired Equipment belongs to us at all times.
- You shall insure and be responsible for the full cost of repair or replacement of any or all of the Hired Equipment that is damaged, lost, confiscated, or stolen from the time you assume custody until it is returned to us. If the Hired

- Equipment is lost, stolen or damaged, you agree to promptly notify us.
- You will be responsible for the proper use and deployment of the Hired Equipment. You will be responsible for training anyone using the Hired Equipment on the proper use of the Hired Equipment in accordance with any Hired Equipment use procedures.
- Unless otherwise agreed, you shall keep the Hired Equipment in your possession and control at all times and shall not allow or authorise any other person or entity to use, re-hire, sub-hire or have possession of Hired Equipment,
- Subject to any warranties imposed by law, we disclaim all representations and warranties associated with the Hired Equipment and any use thereof, including any warranty of fitness for any particular purpose.
- You shall be responsible for the safe packaging, proper import. export, shipping and receiving of the Hired Equipment. The Hired Equipment shall be returned within a reasonable amount of time after any agreed hired or loan period and if none is specified on demand by us
- The Hired Equipment shall be returned to us in as good a condition as when received by you, except for reasonable wear and tear. Prior to return, the Customer agrees to assume all responsibility for maintenance and repair.
- You shall comply with all country, federal, state, county, and municipal laws, ordinances, and regulations, if any, applicable to the transportation and use of the Hired Equipment. You shall secure all local, state and country licenses or permits required to use the Hired Equipment, pay all taxes and fees and comply with all export laws. It is your responsibility to ensure that the Hired Equipment has cleared customs before departing the place or country of use and is in transit to us.
- You agree to indemnify, defend and hold us harmless from any and all damages, losses, claims, causes of actions, expenses and liability of any nature whatsoever associated with your use of Hired Equipment while in your care, custody and control.

- The Customer shall assume the risk of breakage, wastage, loss or damage upon delivery of the Goods to the Customer's nominated delivery point.
- 7.2 The Customer hereby acknowledges that ownership of the Goods will remain with the Company and is only transferred when all sums owing by the Customer for the Goods has been fully paid, save for as specified herein. Until such time the Company reserves the right to recover the Goods at its own option. For this purpose the Company's employees or agents may enter your premises and you are obliged to deliver up the Goods if so directed by the Company. The Customer hereby irrevocably empowers and gives to the Company a license in addition to and without limitation of any other right the Company may have to enter without notice, upon any of its premises and to take possession of the same and to thereafter deal with the Goods as its own. This license endures so long as monies whatsoever are owed by the Customer to the Company.
- Property in Goods delivered to the Customer shall not pass to the Customer until such time as the Company has received payment in full for the Goods, save as specified herein. If the Goods are delivered prior to payment being made by the Customer to the Company, the Customer shall have possession of the Goods by bailee only and such bailment shall be terminable by the Company at any time. The Company may terminate such bailment either by oral or written notice being given to the Customer. Until the date of payment of all monies owing to the Company, the Customer must store the Goods in such a way to show that they are clearly the property of the Company. If the Customer sells Goods to any third party, the consideration received, shall be held on trust for the Company.
- The Customer must whenever requested by the Company sign all documents and do all acts and things requested by the Company to register the interest of the Company on the Personal Property Securities Register and such other register as the Company requires under the PPSA
- 7.5 To the extent permitted by the PPSA the Customer:
  - (a) contracts out of the provisions of the PPSA which, under s.115(1) and Section 157 of the PPSA, it is permitted to contract out of;
  - (b) waives its right to receive from the Company each notice or document which it is permitted to waive under s. 144 of

- (c) waives its right to receive anything from the Company under s. 175 of the PPSA and agrees not to make any request of another company under that section; and
- Nothing in this clause affects the right of the Company to receive a notice, document or amount which it is entitled to receive under another provision of this Agreement or any other agreement to which it is a party.
- 7.6 The Customer and Guarantor hereby acknowledge that the Company may register charges and caveats over all assets of the Customer and Guarantor to secure the payment of all monies owed by the Customer and/or Guarantor to the Company in the event of a breach or threatened breach of this Agreement. The Customer and Guarantor further acknowledge that all costs and disbursements associated with the registration and discharge of all charges and caveats and the recovery of all outstanding monies shall be borne by the Customer and/or Guarantor.

### DEFECTS

- 8.1 We warrant that the rights and remedies in this Agreement for warranty against defects are in addition to other rights and remedies you have under any applicable Law in relation to the Goods and/or Services to which the warranty relates.
- 8.2 The Customer shall inspect the Goods on delivery and shall within 7 days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall subject to applicable law be presumed free from any defect or damage.
- 8.3 To the extent permitted by law, our liability in respect of defective goods and services will be limited to:
  - (a) the re-supply of the Goods and/or Service; or
  - the payment of the cost of having the Goods and/or Services supplied again: or
  - (c) the refund of the price paid by you in respect of the Goods and/or Service.

### OWNERSHIP OF INTELLECTUAL PROPERTY

- You acknowledge that ownership and/or title to any ideas. designs and intellectual property belongs to us at all times.
- 9.2 All intellectual property rights in all quotes, proposals, ideas, diagrams, information, resources, files, documents, design of landscaping and materials remain our property and are not to be disclosed to any other person without our written consent.
- 9.3 You hereby assign to us all your present and future right title and interest in any intellectual property or otherwise arising from or in connection with this Agreement.
- 9.4 You warrant that you will not, whether directly or indirectly, infringe or allow any party to infringe on any intellectual property rights in relation to the Goods and/or Services provided.
- 9.5 You warrant not to publish disclose or communicate any details contained within the drawings and related documents to a third party without first obtaining our consent in writing.

### 10. WARRANTY

- 10.1 The following applies to any express, implied or statutory warranty that may relate to the Goods and Services:
  - (a) The warranty shall not cover any defect or damage which may be caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain, transit or store any Goods; or failure on the part of the Customer to follow any
    - instructions or guidelines provided by the Company; or (iii) any use of any Goods otherwise than for any applicable
    - use specified on a quote or order form; or (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, damage whether from misuse or accident, or external or environmental force or act of God.
- 10.2 The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are treated, repacked or altered without the Company's prior
- 10.3 In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or remedying the Goods or in properly assessing the Customer's

### 11. EXCLUSIONS

11.1 Subject to any warranties imposed by law, the Company gives no warranty and it is not a condition that the Goods or Services supplied hereunder shall be reasonably fit for the purpose for which the Customer requires the same or for any particular purpose. Subject to Clause 8. If there is any dispute regarding the quantity, quality or finish of the Goods or Services or any other matter in connection with this Agreement the Customer shall be obliged to make full payment for the Goods or Services no set off shall be allowed. The Customer shall indemnify the Company for any claims made by third parties for whatever reason in relation to the Goods or Services.

### 12. CANCELLATION POLICY

- 12.1 Cancellations must be approved by the Company. The Company is not obliged to agree to any cancellation request and any such request will only be considered when requested in writing and a minimum of 30 days prior to the requested shipment date.
- 12.2 In the event that the Customer cancels delivery of Goods or order for Services, the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation

- 13.1 If you are in any way in default of the terms of this Agreement, we may immediately suspend your order, cancel your order and/or repossess any Goods in your possession or control and we shall not be liable for any loss or damage whatsoever suffered as a result of such suspension, cancellation and repossession.
- 13.2 Notwithstanding that our interest in Goods may be inseparable and comingled with Customer goods, we may repossess and sell any finished Goods and apply what we receive from the sale of the finished Goods at your expense to any debt owing under this Agreement or elsewhere.

## 14. TERMINATION

- You materially breach the Agreement and the breach cannot be remedied within a reasonable period:
- You cease to carry on a business;
- You are unable to pay your debts as they become due, are presented with a winding-up petition or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to you, your assets, business or operations;
- We believe that any of the events stated in (a) (c) has occurred or there is a material risk that any of those events may occur;

All amounts owed to us become immediately due and payable and we

- terminate this Agreement and any agreement to supply under this Agreement by giving 7 days written notice to you in the event listed in (a), or in any other event, immediately;
- suspend any further supply of Goods or Services:
- cancel any discounts provided to you for early payment;
- repossess any Goods which title remain with us: and/or
- set off any amount owed by you against any amount owed by us.
- 14.1. If we materially breach the Agreement and the breach cannot be remedied within a reasonable time, you may terminate this Agreement by giving 7 days written notice to us. In such event, all amounts owed by you to us under this Agreement will become immediately due and payable and we have the right to repossess all Goods to which title has not vet passed to you.

# 15. INDEMNITY

- 15.1 To the extent permitted by law, you hereby indemnify and hold us harmless against all losses, costs and claims arising from:
  - (a) or in connection with the supply of the Goods or Services unless and except to the extent that any loss, harm, damage, cost or expense was caused or contributed to by us;
  - any alteration to the Goods or any product of our Services other
  - infringement of intellectual property rights which arise from use of specifications provided by you in connection with the Goods or Customer Goods:
  - use the Goods or any product of our Services other than in accordance with the instructions provided by us; your failure to use the Goods or any product of our Services for
  - the purpose you have informed us: or your failure to comply with the terms of this Agreement.

### 16. FORCE MAJEURE

If by reason directly or indirectly of industrial disturbances, strikes, labour disputes, shortage of suitable constituents material, labour. transportation, accidents, pandemics, epidemics, government restrictions, weather events, or any other cause of whatsoever nature beyond the control of the Company, the Company is unable to perform in whole or in part its obligations set forth herein, then the Company shall be relieved of these obligations, to the extent 21. DISCLOSURE OF INFORMATION that it is unable to perform and such inability to perform so caused shall not make the Company liable to the Customer or any other person in any way whatsoever.

### 17. PRICES

All prices quoted in the Company's price lists are subject to change without notice. The Company reserves the right to amend prices.

### 18. GST

The Customer must pay the GST which applies to the supply of any Goods or Services by the Company to the Customer.

### 19. SIGNATORY LIABLE

The signatory warrants it has authority to enter into this Agreement and further agrees that it is personally liable and guarantees all 23. obligations of the Customer under these terms and conditions. The quarantee is in addition to and does not derogate from any other quarantee provided.

### 20. JURISDICTION

The parties shall be bound by the laws of the state of Victoria in relation to all matters arising from all contracts between the parties and the parties agree to submit to the non-exclusive jurisdiction of the court of Victoria and the federal courts of Australia and that any legal proceedings may be heard in these Courts.

We may disclose the information in this application and any default in payment in excess of 50 days to a credit reporting agency in accordance with the Privacy Act and may obtain a report regarding the Applicant's credit worthiness from a credit reporting agency or any credit provider named on this Application or disclosed by a credit reporting agency.

### 22. EXCHANGING INFORMATION WITH OTHER CREDIT PROVIDERS (SECTION 18N PRIVACY ACT. 1988)

You agree to Us obtaining personal information about you from other credit providers, whose names You may have provided to Us or that may be named in a credit report, for the purposes of assessing your application.

### AGREEMENT TO A CREDIT PROVIDER BEING GIVEN A CONSUMER CREDIT REPORT TO COLLECT OVERDUE PAYMENTS ON COMMERCIAL CREDIT (SECTION 18K) PRIVACY ACT 1988)

You agree that We may obtain a consumer credit report about You from a credit-reporting agency for the purpose of assessing your credit worthiness and for collecting overdue payments relating to commercial credit owed by You.

## 24. BUSINESS PURPOSES

You acknowledge that the credit provided to the Company under this Agreement shall be provided wholly or predominantly for business purposes.

### SPECIAL CONDITIONS

The parties expressly covenant and agree that in addition to the terms and conditions herein, the Special Conditions set out in the Schedule hereto shall apply. In the event the Special Conditions are different or inconsistent with other terms and clauses in this Agreement, the terms contained in the Special Conditions shall prevail but only to the extent that such terms or clauses under the Special Conditions are inconsistent or different from the other terms in this Agreement.

### THE FOLLOWING PROVISIONS APPLY WHERE CREDIT TERMS ARE OFFERED:

### 26. CREDIT TERMS

- 26.1 You must pay the full amount of invoices however you may take advantage of any settlement discount offered only if payment in full takes place within the terms specified on the invoice, and no other invoice amounts are outstanding beyond their dates at that time.
- 26.2 In the event you are in debt to us exceeding our credit terms, we reserve the right to; not provide any Goods and/or Services; cancel any Order: and recover all unpaid Goods or Services from you.
- 26.3 From time to time we may review your credit account without notice.
- 26.4 Credit account facilities may be withdrawn at any time at our discretion without prior notice being given.
- 26.5 You acknowledge that any credit provided to you under these this Agreement shall be provided wholly or predominantly for business 26.6 purposes.

# DEED OF GUARANTEE AND INDEMNITY

TO: Sparky Warehouse Australia Pty Ltd ACN 636 536 082

We, each of the undersigned, for ourselves, our respective executors and administrators jointly and severally indemnify you against all loss and guarantees all obligations to you under this Agreement. We will on demand by you pay, to you the whole of the monies owed to you and we will keep you indemnified against all losses, costs, charges and expenses whatsoever which you may incur as a result of any breach of the Agreement. This is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on your part in enforcing payment of any of the monies or obligations owed. We further agree to the security and Special Conditions provisions under this Agreement.

EXECUTED AS A DEED	
Name; Address: Date:	
Name; Address:	

<u>Schedule</u>
Signed by the Applicant Customer or on its behalf
Name and address of signatory
Date

# APPLICATION FOR COMMERCIAL CREDIT