



Maximus Rutherford Pty Ltd ACN 614 554 862
 Unit 7/11 Kyle Street, RUTHERFORD NSW, 2320
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 Email: accounts@maximusrutherford.com.au

COMMERCIAL CREDIT APPLICATION FORM

Company/Registered Business Name _____ ABN _____
(Hereinafter referred to as "the Customer")

Business Address _____ ACN _____
(not PO Box)

Postal Address _____ Post Code _____

Business Phone No _____ Fax No _____ Mobile Ph No _____

Type of Business _____ Established _____ years.

Bank _____ Branch _____ Account No _____

Freight Company _____ Account No _____

MAXIMUS Office Use Only – (Credit Limit) _____

Names and Private Addresses of

	Surname	Christian Names	Address
1. Proprietors <small>(Partnerships and Sole Traders)</small>	_____	_____	_____
	_____	_____	_____
2. Directors <small>(Companies)</small>	_____	_____	_____
	_____	_____	_____

Do any of the Proprietors or Directors act as Trustees for a Trust, if so, provide a copy of the trust deed or other documents establishing the trust. If a trust company, is the trust a unit trust? If so, specify the unit holders.

Email for Statements _____

Email for Invoices _____

Email for Order Acknowledgment / Backorder Advice _____

Trade References: (Companies with whom the business is currently trading)

Approximate average spend per month \$ _____

1. _____ Phone No. _____ Fax _____

2. _____ Phone No. _____ Fax _____

3. _____ Phone No. _____ Fax _____

I/We hereby apply to have a credit account opened in my/our name/s and agree to the terms and conditions on the reverse hereof and also declare that the above facts are TRUE in every aspect.

By this signature here on the Customer confirms and agrees that the standard conditions of sale as set forth on the back of this application shall apply to all sales of goods by Maximus Rutherford or any other agent on its behalf to him or to any other person at his request. With respect to this application for credit, I/we hereby authorise Maximus Rutherford or any officer or employee or agent acting on behalf of Maximus Rutherford to contact the nominated trade references, so as to obtain the relevant information required to open a trading account for our company.

Pursuant to ss.18 K (1) and 18 N (1) of the Privacy Act 1988 and paragraph 2.12 of the Credit Reporting Code of Conduct issued under

s.18 of that Act, you hereby agree to Maximus Rutherford or any agent acting on its behalf obtaining personal information from a credit reporting agency or a credit provider for the purpose of assessing this application for commercial credit (including information as to creditworthiness); and agree to that agency or provider providing that information to Maximus Rutherford or any other agent acting on its behalf for that purpose.

You further agree to the obtaining from, and provision by, such agency or provider further credit reports which may assist Maximus Rutherford or any agency acting on its behalf in recovering any sums outstanding under the terms of the commercial credit agreement to which this application may lead.

I/We agree that if Maximus Rutherford approves the application for credit this agreement remains in force until the credit facility covered by the application cases.

Signature of Authorised Officer or Applicant _____

Print Name of Authorised Officer _____ Date _____

CONDITIONS OF SALE

1. Interpretation

- 1.1 Unless otherwise inconsistent with the context the work "person" shall include a corporation.
- 1.2 "Goods" shall include services.
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the female gender shall be deemed to include the female and neuter gender and vice versa.
- 1.4 "MAXIMUS" shall mean Maximus Rutherford ACN 614 554 862 and any of its subsidiaries, successors and assigns.
- 1.5 "Customer" shall mean the person named in the commercial credit application from annexed hereto.

2. Offer and Acceptance

- 2.1 Any quotation made by MAXIMUS is not an offer to sell or to provide goods. MAXIMUS shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by MAXIMUS within thirty (30) days of receipt by MAXIMUS of the order. These terms and conditions shall be deemed to be incorporated into any agreement between MAXIMUS and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Insofar as goods or services supplied by MAXIMUS are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sales of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited:
 - (a) in the case of goods to any one of the following as determined by MAXIMUS:
 - (i) the refund of the price paid by the customer for the goods or the issue of a credit note for such amount; or
 - (ii) the replacement of the goods or the supply of equivalent goods; or
 - (iii) the repair of the goods; or
 - (iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
 - (v) the payment of the costs of having the goods repaired;
 - (b) in the case of services to any one of the following as determined by MAXIMUS:
 - (i) the supplying of services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 2.3 Any description of goods contained herein is given by way of identification only and use of such description shall not

constitute these presents a sale by description. The Customer shall take the said goods at the Customer's own risk as to their corresponding with sample (if any) or as to their quality condition or sufficiency for any purpose.

- 2.4 Prices of goods are those ruling at the date of despatch, ex works and unpacked, unless otherwise stated in writing by MAXIMUS.
- 2.5 Unless expressly agreed to the contrary, the provisions and tolerances contained in the standard specification which the goods are manufactured by MAXIMUS or its suppliers will apply to all orders accepted.
- 2.6 It is the responsibility of the Customer to adequately inform MAXIMUS of the sizes, quantities, classes, and fully detailed specification of all goods ordered.
- 2.7 All quotations issued by MAXIMUS for specific works are compiled from information available to them and MAXIMUS accepts no responsibility as to the accuracy of the quantities or sizes of goods quoted.

3. Delivery

- 3.1 Delivery of goods to the Customer occurs:
 - (a) Ex works prices – on delivery from our store.
 - (b) On site prices – on delivery to the site specified.
 - (c) Free on rail prices – delivery to the railhead.
 - (d) Free into store prices – on delivery to the premises specified.
- 3.2 Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by MAXIMUS in writing providing for liquidated damages for failure to deliver by the quoted date MAXIMUS shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of MAXIMUS for failure by MAXIMUS to deliver by the quoted date. The customer shall accept and pay for the goods if and when tendered notwithstanding any failure by MAXIMUS to delivery by the quoted date. Written advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.3 MAXIMUS shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of MAXIMUS or any other party, strike or any other industrial action be it or MAXIMUS or any other party or any other cause whatsoever.
- 3.4 MAXIMUS reserves the right to deliver by instalments. If delivery is made by instalments the customer shall not be entitled:
 - (a) to terminate or cancel the contract; or
 - (b) to claim loss or damage howsoever arising failure by MAXIMUS to delivery any instalments on or before the quoted date.

- 3.5 It is agreed that MAXIMUS shall not be responsible for the delay in delivery caused by, or in any way incidental or an act of God, or, fire, breakages of machinery, strikes arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of MAXIMUS.
- 3.6 Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the customer's order.
- 3.7 MAXIMUS is not responsible for loss or damage of goods in transit except when the goods are carried in MAXIMUS' s own vehicles.

4. Payment

- 4.1 Unless otherwise agreed in writing payment terms are net cash thirty (30) days from date of invoice in which the goods are invoiced to the customer.
- 4.2 This term as to the payment shall be of the essence of the contract.

5. Title

- 5.1 Notwithstanding the delivery of the goods or part thereof, all goods sold by MAXIMUS in the possession of the customer and whether some goods have been paid for or not, remain the sole and absolute property of MAXIMUS as full legal and equitable owner until such times as the customer shall have paid MAXIMUS the full price of such goods together with the full price of all other goods then the subject of any other contract with MAXIMUS.
- 5.2 The customer acknowledges that he receives possession of and holds goods delivered by MAXIMUS solely as bailee for MAXIMUS until such time as the full price thereof is paid to MAXIMUS together with the full price of any goods then the subject of any other contract with MAXIMUS.
- 5.3 Until such time as the Customer becomes the owner of the goods, he will;
- (a) store them on the premises separately;
 - (b) ensure that the goods are kept in good and serviceable condition;
 - (c) secure the goods from risk, damage and theft; and
 - (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the customer.
- 5.4
- (a) Until the goods are paid for in full, MAXIMUS authorises the customer to sell the goods as its agent. However, the customer shall not represent to any third parties that it is acting in any way for MAXIMUS. MAXIMUS will not be bound by any contracts with third parties to which the customer is a party.
 - (b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for MAXIMUS. The customer shall account to MAXIMUS from this fund for the full price of the goods.
 - (c) The customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to MAXIMUS for the price of the goods.
 - (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding up application presented against it or has a receiver appointed, MAXIMUS may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract, suspend or cancel this contract or require payment in cash before or on delivery of tender of goods notwithstanding the terms of payment previously specified, or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 5.5 If the customer does not pay for any goods on the due date then MAXIMUS is hereby irrevocably authorised by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and Maximus tery or payment of any compensation to the customer whatsoever.

- 5.6 On retaking possession of the goods MAXIMUS may elect to refund to the customer any part payment that may have been made and to credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6. Risk

Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been delivered in accordance with clause 3.1. The goods shall remain at the customer's risk at all times unless and until MAXIMUS retakes possession of the goods pursuant to these terms and conditions.

7. Claims and Returns

- 7.1 Subject to clause 2.2 herein, MAXIMUS shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim when whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with MAXIMUS or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of MAXIMUS, its servants or agents.
- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever come known to the customer, the customer shall within seven (7) days notify MAXIMUS in writing of the same except claims for non-delivery which must be made in writing within fourteen (14) days from the date of invoice.
- 7.3 MAXIMUS shall not be liable in any circumstances for any:
- (a) defects or damages caused in whole or in part by misuse, abuse, neglect, improper installation, repair or alteration (other than by MAXIMUS) or accident;
 - (b) any transport installation removal, labour or other costs;
 - (c) details in goods not manufactured by it but MAXIMUS will endeavour to pass on to the customer the benefit of any claim made by MAXIMUS and accepted by the customer and the benefit of any claim made by MAXIMUS and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the customer to proceed against MAXIMUS pursuant to the Trade Practices Act; and
 - (d) technical advice or assistance given or rendered by it to the customer or not in connection with the manufacture construction or supply of goods for or to the customer.
- 7.4 All claims must refer to the official invoice number and date and state the reason for the claim.
- 7.5 No freight charges for return of goods under the Customer's volition shall be acceptable by the Company unless authorised by MAXIMUS.
- 7.6 Goods returned for credit will be subject to restocking charges and will be accepted only if received in original condition. A restocking charge to be determined by MAXIMUS will be applied on goods sent back for credit or exchange.
- 7.7 The following goods cannot be returned for credit under any circumstances:
- (a) any merchandise specially cut to length;
 - (b) any goods specially made, coated or otherwise treated or purchased for the Customer;
 - (c) any goods damaged or altered in any way by the Customer.
- 7.8 Acceptance of delivery of goods returned for credit does not signify agreement to issue a credit note. A credit note will be issued only after the goods have been inspected and found to be satisfactory in the opinion of MAXIMUS. In the event that a credit note is not issued, the Customer will be advised and the goods made available to the Customer. MAXIMUS shall not be deemed to be in error unless a confirmation order in writing has been received before goods were despatched.
- 7.9 No responsibility will be accepted for any delays in passing credit caused by goods being incorrectly branded or returned to any other destination than MAXIMUS warehouse or depot from which they were purchased.

8. Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of MAXIMUS, MAXIMUS is unable to perform in whole or in part any obligation under this contract, MAXIMUS shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.

9. Default

Upon the occurrence of default by the customer in compliance with the terms herein:

- 9.1 MAXIMUS may at its discretion withhold further supplies of goods or cancel its contract, or vary the terms of this contract without prejudice to its rights hereunder PROVIDED HOWEVER that MAXIMUS may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 9.2 The customer hereby authorises MAXIMUS or its agent to review its books and records, including all bank statements and other bank records, to determine whether the customer is able to pay its debts as and when they fall due and the customer further irrevocably grants to MAXIMUS a licence to enter upon the customer's premises for such purpose.
- 9.3 The customer shall pay to MAXIMUS interest at the rate of 2% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
- 9.4 Without prejudice to any other right or remedy the customer shall indemnify MAXIMUS against any costs, fees, charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to MAXIMUS on an indemnity basis and all such costs shall be recoverable as a liquidated debt and, at the option of MAXIMUS, may be recovered in the Small Debts Court.
- 9.5 The customer shall pay to MAXIMUS an administration fee of \$50 on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of the loss of MAXIMUS in respect of such act of default, however such fee shall not preclude MAXIMUS from claiming any higher amount from the customer for any loss occasioned by such act of default.
- 9.6 All invoices shall in the event of default become immediately due and payable by the customer despite that some invoice may not otherwise have become due for payment.

10. Change of Ownership

The customer agrees to notify MAXIMUS in writing of any change of ownership of the customer or its business, or of directorships in the case of a corporate customer, or any other change whatsoever affecting this agreement within seven (7) days from the date of such change and indemnifies MAXIMUS against any loss or damage incurred by it as a result of the customer's failure to notify MAXIMUS of any change.

11. Lien Charge

- 11.1 The customer hereby acknowledges and agrees that MAXIMUS has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal, of the customer in respect of any monies that may hereinafter be owing to MAXIMUS under this contract by the customer or otherwise and hereby authorises MAXIMUS or its solicitors to execute any consent from as its attorney for the purpose of registering a caveat over any real property owned by the customer at any time, or to register this charge over assets of the customer with the Australian Securities Commission.

12. Waiver

A waiver by MAXIMUS or the Customer of any default in the strict and literal performance of or compliance with any provision, condition or requirement in these Conditions of Sale shall not be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement herein nor to be a waiver of or in any manner release either party from strict compliance with any provision, condition or requirement in the future nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

13. Jurisdiction

This contract for this supply of the goods is deemed to have been entered into in all Australian States and offshore. Any legal action arising out of or in respect of the contract and/or the interpretation thereof shall be brought only in the Courts of Sydney in the State of NSW and the customer irrevocably submits itself to the jurisdiction of the Courts of Sydney in the State of NSW.

DEED OF GUARANTEE AND INDEMNITY

TO: Maximus Rutherford ACN 614 554 862 and any of its subsidiaries, successors and assigns "MAXIMUS".

Whereas in consideration of MAXIMUS agreeing to supply to the person who is name as "the Applicant" on the credit application annexed hereto (hereinafter called "the customer") with goods and/or services from time to time, I/we the undersigned ('referred to as the guarantor') HEREBY JOINTLY AND SEVERALLY agree with MAXIMUS as follows:

1. To guarantee and to be answerable to MAXIMUS for the due payment by the customer of all monies now or from time to time hereafter owing to or unpaid to MAXIMUS on any account or any matter whatsoever by the customer either directly or indirectly and either alone or jointly with any other person, firm and/or corporation, and including but without limiting the generality of the foregoing, any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by MAXIMUS in enforcing payment by the customer of any such monies.
2. This Guarantee shall constitute a continuing guarantee to MAXIMUS for all monies which are now or may from time to time be owing or remain unpaid and shall not be affected by:

- 2.1 any variation or novation of the agreement between MAXIMUS and the customer extending credit to the customer or any other changes to the terms of such agreement, including any extension to the credit limit applied for by the customer and approved by MAXIMUS from time to time (and whether or not such agreed credit limit is exceeded at any time without approval by MAXIMUS);
- 2.2 the winding-up of the customer or the entry by the customer into a Deed of Company Arrangement whereby any debt due and owing by the customer to MAXIMUS is extinguished or otherwise not recoverable;
- 2.3 any time or other indulgence granted by MAXIMUS to the customer or by any arrangement entered into whereby MAXIMUS's rights are in any way modified or abrogated and no notice of the granting of any time or indulgence or of the entering into any arrangement need be given to the guarantor.
- 2.4 Termination of the agreement between MAXIMUS and the customer for the provision of credit on account of the customer failing to inform MAXIMUS of any change in ownership of the customer's business, share holding or control in

which even the guarantor agrees to guarantee all monies due and owing by any third party to MAXIMUS as a result of the continuance of supply of goods and services to the customer or third party under the customer's account until notification of such change has been given to MAXIMUS and a new written agreement for the provision of credit has been entered into with the third party (including a guarantee and indemnity in the same terms as set out herein);

2.5 The payment by the customer of monies to MAXIMUS which are rendered void pursuant to the laws relating to bankruptcy, liquidation or administration of such monies from the guarantor;

2.6 Any legal limitation, disability or incapacity of the customer or any other circumstances whatsoever and any monies may be recoverable from the guarantor as principal debtor.

3. The guarantor hereby indemnifies MAXIMUS in respect of all amounts payable by the customer to MAXIMUS on account of goods and/or services supplied by MAXIMUS to the customer, and all costs and interest which the customer may be required to pay MAXIMUS, and the indemnity hereby given is a separate covenant and shall not be affected by the appointment by the customer of an administrator under the provision of the Corporations Law or any Deed of Company Arrangement entered into by the customer.

4. The guarantor hereby charges all property, both equitable and legal, present or future of the guarantor in respect of any monies that may hereinafter be owing to MAXIMUS under this contract by the guarantor or otherwise and hereby

authorise MAXIMUS or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the guarantor at any time, or to register this charge over assets of the guarantor with the Australian Securities Commission.

5. The guarantor shall be liable to MAXIMUS for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceedings to recover under this guarantee.

6. It is expressly declared that notwithstanding the fact that this Deed of Guarantee and Indemnity may be intended or expressed to be executed and given by more than one person, the same shall in fact be a valid and effectual guarantee binding against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.

7. This Guarantee and the construction and interpretation of it shall be governed by the laws of the State of NSW in force for the time being and from time to time, and the parties to this Deed of Guarantee and Indemnity irrevocably submit unconditionally to the jurisdiction of the Courts of NSW in the State of NSW in respect of all claims, proceedings and matters arising out of or in respect to this Deed of Guarantee and Indemnity.

8. In this Guarantee, unless the context otherwise requires, the singular includes the plural and vice versa, and gender includes each of the other genders, and words importing persons include firms, incorporated bodies and corporations.

SIGNED, SEALED AND DELIVERED THIS

DAY OF

20

Signature of Guarantor

Signature of Witness

Print Full Name

Print Full Name

Address

Address

Signature of Guarantor

Signature of Witness

Print Full Name

Print Full Name

Address

Address