



WALKERS

EST. 1906

Application for Commercial Credit

CONFIDENTIAL CREDIT APPLICATION FORM

Completing and submitting this document

For your application to be processed, ensure you have completed and signed both parts of this document.

Confidential Credit Application Form and the **Personal Guarantee and Indemnity Agreement**

Return this document (completed, signed and witnessed) to

F.C. Walker & Sons Pty Ltd, ABN 59 004 683 498 ACN 004 683 498

93 West Fyans St, Newtown, VIC, 3220

Phone: (03) 5222 1255

Email: admin@walkers.com.au

Completing and Submitting this Document

Thank you for applying for credit facilities with F.C. Walker & Sons Pty Ltd ABN 59 004 683 498 of 93 West Fyans St, Newtown, VIC, 3220.

For your application to be processed, it is necessary to complete and sign both parts of this document: the **Confidential Credit Application Form** and the **Deed of Personal Guarantee and Indemnity Agreement**.

Return this document (completed, signed, and witnessed) to F.C. Walker & Sons Pty Ltd at the address listed above.

Application Date: ____/____/20____

Walkers Sales Representative: _____

Section 1 – All Applicants *Complete this Section.*

Enter all details relevant to your Business.

Business Operates as ☐ Pty Ltd/Ltd Company ☐ Trustee ☐ Sole Trader ☐ Partnership

Business/Company Name _____

ABN _____ **ACN** _____

Trading Name _____

Trust Name (if applicable) _____

Trust ABN (if applicable) _____

Postal Address _____

Business/Street Address _____

Ph. Business _____ **After Hours** _____ **Mobile** _____

Fax _____ **Email** _____

Year Business Commenced _____ **Nature of Business** _____

Bank Name _____ **BSB No** _____ **Account No** _____

Contracting/Building Licence No _____

Estimated Monthly Purchases \$ _____ **Credit Limit Requested \$** _____

Section 2 – Companies, Sole Traders and Business Partnerships

Enter all details for directors, Sole Traders and Business Partners.

(1) Full Name _____

DOB _____ **Drivers Licence No** _____

Residential Address _____

_____ **Postcode** _____

Residence: ☐ Owned ☐ Rented

(3) Full Name _____

DOB _____ **Drivers Licence No** _____

Residential Address _____

_____ **Postcode** _____

Residence: ☐ Owned ☐ Rented

(2) Full Name _____

DOB _____ **Drivers Licence No** _____

Residential Address _____

_____ **Postcode** _____

Residence: ☐ Owned ☐ Rented

(4) Full Name _____

DOB _____ **Drivers Licence No** _____

Residential Address _____

_____ **Postcode** _____

Residence: ☐ Owned ☐ Rented

Section 3 – Spouses of Directors, Sole Traders, and Business Partners.

Enter all details for Spouses of all Directors, sole Traders, and Business Partners.

(1) Spouse Full Name _____

DOB _____ Drivers Licence No _____

Residential Address _____

_____ Postcode _____

Residence: ☐ Owned ☐ Rented

(3) Spouse Full Name _____

DOB _____ Drivers Licence No _____

Residential Address _____

_____ Postcode _____

Residence: ☐ Owned ☐ Rented

(2) Spouse Full Name _____

DOB _____ Drivers Licence No _____

Residential Address _____

_____ Postcode _____

Residence: ☐ Owned ☐ Rented

(4) Spouse Full Name _____

DOB _____ Drivers Licence No _____

Residential Address _____

_____ Postcode _____

Residence: ☐ Owned ☐ Rented

Section 4 – All Applicants *Complete this Section.*

Enter Trade References - Major Suppliers.

NAME	CONTACT DETAILS	EMAIL ADDRESS	PHONE NUMBER

Section 5 – All Applicants *Complete this Section.****History of Solvency***

Has the Applicant or anyone associated with the Applicant been:

A. Bankrupt or used Part X of the Bankruptcy Act? YES/NO

B. Involved with the management or control of a business which has been wound up, had receivers appointed or entered into a scheme for the benefit of creditors? YES/NO

If yes, please provide details: _____

Section 6 – All Applicants *Complete this Section.****Financial Details***

Are business premises owned or leased? ☐ Owned ☐ Leased

If owned, are premises subject to mortgage or charge? _____

Is there any other charge or mortgage on the business assets? YES/NO

If yes, please provide details: _____

Does any financial institution, company or person hold personal guarantees or other form of security from you personally, your spouse or your company? YES/NO

If yes, please provide details: _____

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1. "ACL" means the Australian Consumer Law, being Schedule 2 to the Competition and Consumer Act 2010 (Cth), as amended from time to time.
- 1.2. "Consequential Loss" means any indirect, special, incidental, consequential, punitive or exemplary loss or damage, howsoever arising and whether in contract, tort (including negligence), under statute, in equity or otherwise, including (without limitation) any loss of profits, revenue, savings, business, contracts, production, use or opportunity, loss of or damage to goodwill or reputation, loss or corruption of data, financial or holding costs, downtime costs, wasted expenditure or overheads, and any other loss not arising naturally and directly from the relevant act, omission or event.
- 1.3. "Customer" (and any reference to "you" or "your" in these Terms) means the entity that has contracted with the Supplier to buy Goods and/or Services.
- 1.4. "Goods" means any goods supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied).
- 1.5. "Order" means any written or oral order placed by the Customer in which it requests that the Supplier supply it with Goods and/or Services.
- 1.6. "Price" means the cost of the Goods and/or Services as determined by clause 4 and includes all out-of-pocket expenses the Supplier incurs on the Customer's behalf.
- 1.7. "Services" means any services supplied by the Supplier to the Customer (or ordered by the Customer but not yet supplied).
- 1.8. "Supplier" (and any reference to "us" or "we" or "our" in these Terms) means **F.C. Walker & Sons Pty Ltd ABN 59 004 683 498**, its 'related bodies corporate' (as that term is defined in the *Corporations Act 2001* (Cth)) and its successors and assigns.
- 1.9. "Terms" means these Terms and Conditions of Trade.

2. GOODS AND SERVICES ON CREDIT

- 2.1. Any Orders received by the Supplier from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of these Terms.
- 2.2. The Customer acknowledges that these Terms take precedence over any terms and conditions contained in any document provided by the Customer.
- 2.3. The Customer expressly warrants and acknowledges that any credit provided to the Customer by the Supplier is to be used for wholly (or predominantly) business purposes.
- 2.4. The Customer must give the Supplier at least fourteen (14) days' prior written notice of any change to its ownership, business structure, ABN/ACN, name, address, or contact details. The Customer will be liable for any loss the Supplier suffers as a result of its failure to comply with this clause.
- 2.5. The Supplier may increase or decrease the Customer's account credit limit by written notice to the Customer, effective immediately, and no such decrease shall, of itself, constitute a default or breach by the Customer of these Terms.
- 2.6. Any credit sought or approved is for the Supplier's internal credit assessment purposes only. It does not limit or reduce the Customer's liability for all amounts owing, whether arising before or after any stated amounts, nor does it oblige the Supplier to provide credit up to that amount.
- 2.7. The Supplier is not obliged to sell on credit terms and reserves the right to require payment before the Goods/Services are provided.
- 2.8. The Supplier may suspend or cancel the supply of further Goods and/or Services if the Customer breaches any of these Terms.

3. PRIVACY POLICY & CREDIT REPORTING POLICY

- 3.1. The Supplier collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. A hard copy of these policies can be provided to the Customer free of charge, upon request, and is available on the Supplier's website at www.walkers.com.au.
- 3.2. By the Customer completing the Application for Commercial Credit or providing any Order to the Supplier for the supply of Goods and/or Services, the Customer is consenting to the Supplier (including its authorised agent or legal representative collecting) collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit-related personal information) in accordance with the terms of the Supplier's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.
- 3.3. The Customer agrees to the Supplier (including its authorised agent or legal representative collecting) disclosing credit-related information to the following credit reporting bodies and their successors and assigns:
 - 3.3.1. Equifax Australia, GPO Box 964, North Sydney NSW 2059, www.equifax.com.au, 138 332.
 - 3.3.2. CreditorWatch, GPO Box 276, Sydney NSW 2001, www.creditorwatch.com.au, 1300 501 312.
 - 3.3.3. CMSA Pty Ltd, STE 203, 91 - 99 Mann Street, Gosford NSW 2250, www.cmsa.au, (02) 4322 6855.

4. PRICE & GST

- 4.1. The Price shall be:
 - 4.1.1. if the Supplier has provided a quotation for the relevant Goods and/or Services, as stated on any relevant quotation (subject to clause 7);
 - 4.1.2. where no quotation has been issued, such price as has been agreed (in writing) by the Supplier; or
 - 4.1.3. in the absence of either a quotation or written agreement as to price, the price set out in the Supplier's price list current as at the date of the relevant Order.
- 4.2. The Supplier may vary the Price or rates stated in any Order where:
 - 4.2.1. there has been any movement in the Supplier's costs of supply (including, without limitation, manufacturing, procurement, transport, foreign exchange, duties, labour or materials);
 - 4.2.2. additional Goods or Services are required by reason of latent or unforeseen matters discovered after commencement of supply; or
 - 4.2.3. the variation is attributable to circumstances beyond the Supplier's reasonable control.
- 4.3. The Supplier shall give the Customer written notice of any proposed variation under clause 4.2. Unless the Customer rejects the variation by written notice to the Supplier within fourteen (14) days of receipt, the varied Price or rates shall apply to all Goods and/or Services thereafter supplied. Where the Customer duly rejects a variation, the Customer may terminate the relevant contract of supply without cost or penalty, without prejudice to the Supplier's entitlement to payment for any Goods and/or Services already supplied.
- 4.4. Unless expressly stated otherwise, all prices, fees, charges and other amounts referred to in these Terms or in any quotation, invoice or Order are exclusive of GST.
- 4.5. Where GST is payable on any taxable supply made by the Supplier to the Customer, the Customer must pay to the Supplier, in addition to the Price, an amount equal to the GST payable on that supply, at the same time and in the same manner as the Price.
- 4.6. The Supplier shall provide the Customer with a valid tax invoice in respect of each taxable supply.
- 4.7. In this clause, "GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5. PAYMENT

- 5.1. Subject to clause 5.2, payment of the Price, is due on any of the following dates (as determined by the Supplier) which may be:
 - 5.1.1. on delivery of the Goods and/or supply of the Services;
 - 5.1.2. before delivery of the Goods and/or supply of the Services;
 - 5.1.3. the due date specified on the Supplier's invoice;
 - 5.1.4. in the absence of any notification of the due date by the Supplier, payment shall be due thirty (30) days from the date of invoice.
- 5.2. Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
 - 5.2.1. there is non-payment of any sum by the due date;
 - 5.2.2. the Customer is bankrupted or enters administration, liquidation or receivership;
 - 5.2.3. there is a change in the financial position of the Customer which materially adversely affects its ability to pay for Goods and/or Services.
- 5.3. Unless prohibited by law, all payments to be made by the Customer to Supplier shall be made without set-off or counterclaim (whether arising at law or in equity), and free and clear of any withholding or deduction whatsoever.

- 5.4. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in the Supplier receiving cleared funds for the entire amount of the negotiable instrument. In respect of cheques, the Supplier will present the cheques within a reasonable time.
- 5.5. The Supplier reserves the right to not accept payment by credit card or debit card (including Mastercard, Visa, Diners Club or American Express) as those providers will charge the Supplier a merchant fee that is deducted from the payment.
6. **INTEREST, COSTS & INDEMNITY**
 - 6.1. Interest (simple) accrues on any amount owing by the Customer after the due date at the rate of 18% per annum, calculated daily from the first day overdue until payment.
 - 6.2. Should the Customer default in the performance or observance of any of its obligations under any contract of which these Terms form part, the Supplier shall act reasonably and take such steps as are appropriate to mitigate its loss, and the Customer shall indemnify the Supplier against all loss, damage and costs arising therefrom (including collection agent's costs and legal costs on a full indemnity basis), provided that the Customer's liability under this indemnity shall be reduced proportionally to the extent that any fraud, negligence or wilful misconduct on the Supplier's part, or any breach by the Supplier of its contractual obligations, has contributed to the relevant claim, loss, damage or cost. This indemnity constitutes a continuing obligation, separate and independent from the Customer's other obligations, and shall survive the termination or completion of any contract of which these Terms form part.
 - 6.3. For the purposes of clause 6.2, the Customer acknowledges that collection agents' costs may be calculated on a commission basis at a percentage rate of up to 20% of the overdue debt and be contingent upon payment of the Customer's overdue debt (or any portion thereof), irrespective of the amount of work performed by the collection agent before the payment is made. The Customer agrees that it will pay any such commission or fees as liquidated damages on demand.
7. **QUOTATION**
 - 7.1. Where a quotation is given by the Supplier for Goods and/or Services:
 - 7.1.1. unless otherwise agreed in writing, the quotation shall be valid for no longer than thirty (30) days from the date of issue;
 - 7.1.2. any quotation given orally by the Supplier for Goods and/or Services is subject to, and takes effect only upon, written confirmation by the Supplier;
 - 7.1.3. the Supplier reserves the right, until the quote is accepted, to alter the quotation because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its suppliers for products, services, freight and/or insurance.
8. **RISK TO GOODS AND DELIVERY**
 - 8.1. Subject to clause 8.5, risk in any Goods shall be deemed to pass to the Customer at the time when the Goods have been either (a) delivered to the Customer or (b) delivered to the delivery address nominated by the Customer.
 - 8.2. For the purpose of clause 8.1, the Customer agrees and acknowledges that in the event that there is no representative of the Customer present to receive the Goods between the hours of 7:00am and 4:00pm local time, the Customer is entirely responsible for any loss, expenses, damages and liabilities occasioned as a result. The Supplier is not liable for any loss, damage, cost or liability arising from delivery of the Goods to the nominated delivery address where no representative of the Customer is present at the time of delivery.
 - 8.3. The Customer expressly acknowledges and agrees that any delivery date given by the Supplier as the delivery date for Goods is an estimate only and does not constitute a contractual term or legally binding representation, since the Supplier is reliant upon third parties to supply Goods by any nominated delivery date. Accordingly, the Supplier shall not be liable for any loss or damage to the Customer or any third party if the Goods are not delivered by a nominated delivery date.
 - 8.4. The cost of freight and insurance to the point of the delivery address shall be at the Customer's expense and shall form part of the Price.
 - 8.5. Where the Customer arranges freight to its nominated location, risk in any Goods shall pass when its nominated agent/carrier collects the Goods from the Supplier.
 - 8.6. The Customer is responsible for unloading the Goods at the point of delivery.
 - 8.7. The Supplier may charge a reasonable storage fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.
9. **TITLE & PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**
 - 9.1. Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with the Supplier until it has received payment in full for all monies owed by the Customer.
 - 9.2. Until the Supplier has received payment in full for all monies owed by the Customer, the Supplier reserves the following rights:
 - 9.2.1. legal and beneficial ownership of the Goods;
 - 9.2.2. right to enter the Customer's premises (as the Customer's invitee) to retake possession of the Goods;
 - 9.2.3. the right to keep or resell any Goods repossessed under sub-clause 9.2.2; and
 - 9.2.4. any other rights it may have at law or under the PPSA.
 - 9.3. Where, pursuant to sub-clause 9.2.3:
 - 9.3.1. the Supplier resells the Goods repossessed, it is agreed that the Supplier shall credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
 - 9.3.2. the Supplier retains possession of the repossessed Goods, it is agreed that the Supplier shall credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
 - 9.4. The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods (unless the action taken to repossess the Goods was grossly negligent or constituted wilful misconduct).
 - 9.5. If the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to the Supplier as security for the full satisfaction by the Customer of the full amount owing by the Customer to the Supplier.
 - 9.6. Until the Supplier receives payment for Goods in full, the Customer acknowledges that the Supplier has a Purchase Money Security Interest ("PMSI") which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Supplier.
 - 9.7. **General**
 - 9.7.1. Upon assenting to these Terms, the Customer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA.
 - 9.7.2. The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Supplier asks and considers reasonably necessary for the purposes of:
 - 9.7.2.1. ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
 - 9.7.2.2. enabling the Supplier to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by the Supplier.
 - 9.8. To the extent permitted by law, the Customer irrevocably waives its right to:
 - 9.8.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - 9.8.2. redeem the Goods under section 142 of the PPSA;
 - 9.8.3. reinstate this agreement under section 143 of the PPSA;
 - 9.8.4. receive a Verification Statement.
 - 9.9. Nothing in clause 9 prevents the Supplier from taking collection or legal action against the Customer to recover any monies owed from time to time.

10. **COMPLAINTS & DEEMED ACCEPTANCE**

- 10.1. Subject to clause 10.4 below, the Customer must notify the Supplier in writing, within seven (7) days of delivery of the Goods or supply of the Services (as applicable), of any issue in relation to:
- 10.1.1. short, incomplete or late delivery or supply;
 - 10.1.2. damage apparent on delivery;
 - 10.1.3. incorrect Goods or Services having been supplied; or
 - 10.1.4. any other matter that is, or ought reasonably to have been, apparent on delivery or supply,
- (each, a "**Complaint**"). The Customer acknowledges that this timeframe is necessary to enable the Supplier to make contemporaneous enquiries and investigations into the Complaint and its causes.
- 10.2. Where a Complaint is made, the Customer must, upon request, permit the Supplier's nominated representative to attend the premises at which the Goods are located or, in the case of Services involving workmanship, at which the workmanship was performed, in order to inspect the Goods and/or workmanship (as applicable).
- 10.3. If the Customer fails to notify the Supplier of a Complaint within the period specified in clause 10.1, or fails to permit the Supplier to inspect the Goods and/or workmanship in accordance with clause 10.2, then, to the fullest extent permitted by law, the Goods and/or Services are deemed to have been accepted by the Customer.
- 10.4. Nothing in this clause operates to exclude, restrict or modify any right or remedy the Customer has under the ACL.

11. **LIMITATION OF LIABILITY**

- 11.1. All implied conditions, warranties and undertakings other than the statutory guarantees set out in the ACL are expressly excluded to the extent permitted by law.
- 11.2. Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Supplier's liability for a failure to comply with a statutory guarantee under the ACL is limited, at the Supplier's option, to any one or more of the following:
- 11.2.1. repairing the Goods;
 - 11.2.2. the costs of repairing the Goods;
 - 11.2.3. the replacement or supply of the equivalent of the Goods; or
 - 11.2.4. the payment of the costs of replacing the Goods or acquiring their equivalent.
- 11.3. Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then the Supplier's liability for a failure to comply with a statutory guarantee under the ACL is limited, at the Supplier's option, to:
- 11.3.1. supplying the Services again; or
 - 11.3.2. the payment of the costs of supplying the Services again.
- 11.4. Neither party shall be liable to the other for any Consequential Loss, howsoever arising, in connection with any contract for supply of which these Terms form part.

12. **CANCELLATION OF ORDERS**

- 12.1. Subject to clause 12.2, Orders placed with the Supplier cannot be cancelled by the Customer without the written approval of the Supplier. In the event that the Supplier accepts the cancellation of any order placed, it is agreed that the Supplier shall credit the Customer's account with the invoice value less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 12.2. Where the Customer orders any Goods from the Supplier that the Supplier does not have in stock, such that the Supplier is required to order the Goods from a third party (known as a "**Special Buy-In**"), the order is non-cancellable by the Customer, unless the third party itself is prepared to credit the Supplier for the cancelled Special Buy-In in which case the Supplier shall credit the Customer's account with the invoice value (as rendered to the Customer) less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

13. **SECURITY & CHARGES**

- 13.1. The Customer hereby charges in favour of the Supplier all of the Customer's:
- 13.1.1. estate and interest in any real property; and
 - 13.1.2. present and after-acquired personal property,
- that the Customer now has, or which it may later acquire any such interest in (whether legal or beneficial), whether such property is held in the Customer's own right or in its capacity as trustee, with payment of all moneys owed by the Customer to the Supplier now and in the future, and hereby consents to the Supplier lodging a caveat or caveats which note the Supplier's interest.
- 13.2. Where the Customer has previously granted a charge, mortgage and/or other security interest to the Supplier in any previous agreement, that charge, mortgage and/or security interest will continue, and shall be in addition to and separate from the charges and security interests created in this agreement.

14. **FORCE MAJEURE**

- 14.1. Neither party shall be liable for any failure or delay in performing its obligations under these Terms (other than an obligation to pay money) to the extent that such failure or delay is caused by an event beyond that party's reasonable control, including (without limitation) acts of God, fire, flood, storm, earthquake, war, terrorism, civil unrest, epidemic or pandemic, government action or restriction, embargo, strike or industrial action, failure of utilities or telecommunications, or disruption to supply chains ("Force Majeure Event").
- 14.2. The affected party must promptly notify the other party of the Force Majeure Event and use reasonable endeavours to mitigate its effects and to resume performance as soon as reasonably practicable.

15. **MISCELLANEOUS**

- 15.1. This agreement constitutes the entire agreement between the parties relating to its subject matter. All previous negotiations, representations and understandings are merged into this agreement. No oral representation or information provided by the Supplier constitutes a legally binding representation, contractual term or collateral agreement.
- 15.2. A waiver of any provision of these Terms will only be effective if made by the affected party in writing.
- 15.3. If any provision of this agreement shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 15.4. Neither party may assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), save that the Supplier may assign to a related body corporate without consent.
- 15.5. The Supplier may vary these Terms from time to time by giving the Customer at least thirty (30) days' written notice of the proposed variation. The notice will set out the nature of the variation and the date on which it is intended to take effect. Any variation will apply prospectively only and will not affect amounts already owing or transactions entered into prior to the effective date of the variation. If the Customer does not agree to the proposed variation, the Customer may, by written notice to the Supplier, given before the effective date of the variation, terminate the credit arrangement without penalty. Termination will not affect the Customer's obligation to pay any amounts owing as at the date of termination. If the Customer continues to request or receive credit, Goods, and/or Services from the Supplier after the effective date of the variation, the Customer will be taken to have accepted the variation.
- 15.6. If an order is placed by the Customer as an agent of a principal (whether disclosed or undisclosed), both the agent and the principal shall be jointly and severally liable to pay for the Goods and/or Services and the relevant contracts shall be governed by these Terms.
- 15.7. If the Customer is a trustee of a trust, the Customer warrants that it enters into this Agreement and any Order both in its capacity as trustee and in its own right, that it is duly empowered under the trust deed to do so, and that it is entitled to be fully indemnified out of the assets of the trust. The Customer further agrees that it will neither retire as trustee nor appoint any new or additional trustee without first giving written notice to the Supplier and procuring the incoming or additional trustee to execute an agreement on substantially the same Terms, and shall provide the Supplier with a true and complete copy of the trust deed upon request.
- 15.8. These Terms shall be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

Declaration & Execution

I/We certify, warrant and acknowledge that:

- a. the information provided in support of this Application for Commercial Credit (**Credit Application**) is true, accurate and complete in all material respects, and I/we am/are duly authorised to submit this Credit Application, and to enter into contracts, on behalf of the Customer;
- b. I/we have read, understood and agree to be bound by the **Privacy Policy** and **Credit Reporting Policy** (available on our website at www.walkers.com.au) and the **Terms and Conditions of Trade**, which together with this Credit Application constitute the agreement between the Customer and the Supplier;
- c. where the Customer is a company, I/we understand that the granting of any credit facility may be conditional upon each of the Customer's directors executing the **Deed of Personal Guarantee and Indemnity Agreement** appearing at **pages 8 and 9** of this document, and that, upon the Supplier's acceptance of this Credit Application, the Supplier may supply Goods and/or Services to the Customer on the **Terms and Conditions of Trade**;
- d. I/we have had the opportunity to obtain independent legal advice in respect of this Credit Application and, where applicable, the **Deed of Personal Guarantee and Indemnity Agreement**, and have either obtained such advice or elected not to do so; and
- e. I/we, in my/our personal capacity as signatory(ies), have read, understood and agree to the **Privacy Policy** and **Credit Reporting Policy** as though each reference therein to "you" were a reference to me/us individually, and accordingly consent to the Supplier collecting my/our personal information, conducting such searches as it considers necessary, and using my/our credit information, in each case in accordance with the **Privacy Policy** and **Credit Reporting Policy**.

APPLICANT SIGNATURE/S

Application is hereby made for a credit account. I agree to be bound by the above terms, and consent to the terms under the *Privacy Act 1988*, as detailed in Clause 3 of the terms and conditions above. I acknowledge that the Supplier may in future acquire additional subsidiaries, which may supply Goods to me on credit, and I agree that the above terms will apply to the purchase of those Goods.

ALL DIRECTORS, SOLE TRADERS AND BUSINESS PARTNERS SIGN BELOW

(1) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

I Agree to have my identity information verified with the Issuer or Official Record Holder via third party systems for the purpose of verifying my identity

(Please tick box) ☐

INDEPENDENT WITNESS SIGN BELOW (Not Spouses or Family Members)

(1) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

For this application to be deemed fully complete, please ensure that the Tick Box at the left is ticked by all signatories and witnesses 1,2, 3 & 4

(2) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

I Agree to have my identity information verified with the Issuer or Official Record Holder via third party systems for the purpose of verifying my identity

(Please tick box) ☐

(2) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

(3) SIGNED BY

Signature _____

Print Name of Signatory_____

Mobile Telephone Number _____

Date / /

**I Agree to have my identity information verified with
the Issuer or Official Record Holder via third party systems
for the purpose of verifying my identity**

(Please tick box) ☐



(3) WITNESSED BY

Signature _____

Print Name of Signatory_____

Mobile Telephone Number _____

Date / /

(4) SIGNED BY

Signature _____

Print Name of Signatory_____

Mobile Telephone Number _____

Date / /

**I Agree to have my identity information verified with
the Issuer or Official Record Holder via third party systems
for the purpose of verifying my identity**

(Please tick box) ☐



(4) WITNESSED BY

Signature _____

Print Name of Signatory_____

Mobile Telephone Number _____

Date / /

DEED OF PERSONAL GUARANTEE AND INDEMNITY

Important Note

As part of your application for credit, this **Deed of Personal Guarantee and Indemnity Agreement** must be completed and signed by all Directors, Sole Traders, and Business Partners in the presence of Independent Witnesses (not Spouses or Family

In consideration of F.C. Walker & Sons Pty Ltd ABN 59 004 683 498 of 93 West Fyans St, Newtown, VIC, 3220 or its assigns here known as the **"Supplier"** and its 'related bodies corporate' (as that term is defined in the **Corporations Act 2001 (Cth)**) (**Supplier**) granting the Customer (as named in the Application for Commercial Credit) credit or agreeing to do so, **I/WE hereby unconditionally agree:**

I the undersigned have requested the Supplier to:

supply _____ trading as _____
("the **Customer**") *Business or Company Name* *Trading Name and/or Trust Name*
of _____
Address of Business or Company

with Goods on credit. Should the Supplier elect to do so then, I/WE hereby acknowledge and agree:

- to personally guarantee to the Supplier the due and punctual payment by the Customer of any and all moneys at any time owing and payable by the Customer to the Supplier;
 - to indemnify the Supplier against any and all losses, expenses, costs and damages arising from any past, present or future dealing with the Customer or any of us;
 - that this is a continuing guarantee and indemnity;
 - that where there is more than one guarantor, the liability under this guarantee and indemnity is joint and several, and that in this guarantee and indemnity, "I", and "we" and "us" means each of the guarantors jointly and severally;
 - that our obligations under this guarantee and indemnity are principal obligations and are not ancillary or collateral to any other right or obligation;
 - that this guarantee and indemnity remains in full force and effect until such time as the Supplier provides us with a full written release and notwithstanding the fact that any of us may later cease to be a director, shareholder or officer of the Customer;
 - that obligations under this guarantee and indemnity are absolute, unconditional, and irrevocable, and shall not be avoided, limited, reduced, discharged, released or affected by:
 - any indulgence, waiver, or other concession, whether as to time or otherwise, granted to the Customer or any guarantor;
 - the release of any guarantor;
 - any incapacity of any guarantor;
 - any insolvency or similar proceedings;
 - any person named in this guarantee and indemnity as guarantor failing to execute this document;
 - by any other act, matter, omission, or thing which under the law of sureties, equity, or otherwise, would or may but for this provision, release any of the guarantors from all or any part of their obligations under this guarantee and indemnity;
 - any failure by the Supplier to take, hold, perfect, maintain or otherwise protect any security now or hereafter held, or contemplated to be held, whether in respect of any guarantor or the Customer;
 - any credit granted to the Customer being in excess of any credit limit set by the Supplier for the Customer; or
 - any act or omission of the Supplier that has had the effect that the liability under this guarantee and indemnity has increased;
 - that the Supplier is entitled to enforce this guarantee and indemnity without having first taken steps to recover against the Customer, and the Supplier is otherwise not obligated to proceed against the Customer or exhaust its remedies against the Customer before proceeding under this guarantee and indemnity;
 - that, if the Supplier forms the view, for any reason, after it receives a payment from the Customer and applies the payment to a debt owed by the Customer, that the Supplier is obliged to disgorge the payment or portion thereof to a Liquidator appointed to the Customer, the Supplier's rights are reinstated in relation to the debt that the Supplier applied the payment to (as if the payment had never been made) and I/we shall be liable to pay the Supplier the amount it disgorges to the Liquidator;
 - to further indemnify the Supplier against any and all losses and legal costs (on a full indemnity basis) that the Supplier incurs as a result of disgorging monies to a Liquidator appointed to the Customer;
 - to hereby jointly and severally charge, in the Supplier's favour, all our estate and interest in any real property and any personal property, in which we now have any legal or beneficial interest or in which we later acquire any such interest in, with payment of all monies owed from time to time by the Customer or any of us and consent to the Supplier lodging a caveat(s) which note the Supplier's interest in any of our real property;
 - that I/we execute this guarantee and indemnity both in my/our personal capacity and as trustee of every trust of which I am/we are a trustee and/or a beneficiary;
 - to be liable for all the Supplier's collection and legal expenses (on a full indemnity basis) with respect to taking any action to preserve and/or enforce the Supplier's rights under this guarantee and indemnity;
 - that the invalidity or unenforceability of any provision of this guarantee and indemnity shall not affect the validity or enforceability of the remaining provisions;
 - that this guarantee and indemnity shall be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria;
- Privacy Policy & Credit Reporting Policy**
- Each guarantor acknowledges that the Supplier has informed it, in accordance with the *Privacy Act 1988 (Cth)*, that personal information relating to the guarantor contained in, or arising from, the credit account application, this guarantee and indemnity, and any related dealings may be collected, used and disclosed by the Supplier. Each guarantor expressly consents to the Supplier (including its authorised agent or legal representative collecting) collecting, handling, using and disclosing that personal information in accordance with the Supplier's Privacy Policy and Credit Reporting Policy, as amended from time to time.
 - Each guarantor agrees that, for the purposes of assessing the provision of credit to the Customer and the acceptance and ongoing administration of this guarantee and indemnity, the Supplier (including its authorised agent or legal representative collecting) may obtain from one or more credit reporting bodies a credit report containing personal information, including consumer credit information, about the guarantor.

18. Each guarantor authorises the Supplier (including its authorised agent or legal representative collecting) to disclose to any credit reporting body, credit reference agency, financier, insurer, mercantile agent or other third party, in response to credit references or enquiries about the guarantor, or by way of information exchange, details of:
- 18.1. this guarantee and indemnity;
 - 18.2. the guarantor's obligations and liabilities under it; and
 - 18.3. any subsequent dealings, defaults, enforcement action or recoveries arising as a result of this guarantee and indemnity being relied upon or enforced by the Supplier.
19. For the purposes of clause 18 above, each guarantor agrees to the Supplier (including its authorised agent or legal representative collecting) disclosing credit-related information to the following credit reporting bodies and their successors and assigns:
- 19.1. Equifax Australia, GPO Box 964, North Sydney NSW 2059, www.equifax.com.au, 138 332.
 - 19.2. CreditorWatch, GPO Box 276, Sydney NSW 2001, <https://creditorwatch.com.au>, 1300 501 312.
 - 19.3. CMSA Pty Ltd, STE 203, 91 - 99 Mann Street, Gosford NSW 2250, www.cmsa.au, (02) 4322 6855.
20. Each guarantor acknowledges and agrees that personal and credit-related information relating to the guarantor will continue to be collected, used and disclosed by the Supplier in accordance with the Supplier's Privacy Policy and Credit Reporting Policy for so long as any liability (actual or contingent) remains under this guarantee and indemnity, copies of which can be made available by the Supplier or accessed via the Supplier's website www.walkers.com.au

We have read and understood this document and have been given an opportunity to seek independent legal advice prior to signing this Deed of Personal Guarantee and Indemnity.

CERTIFICATE OF GUARANTEE

EXECUTED AS A DEED

Agreement to Terms of the Personal Guarantee and Indemnity

By signing below as Guarantor, in the presence of a Witness, I certify that I have read the terms of the Personal Guarantee and Indemnity Agreement and understand its terms and that it is an important legal document. In particular, I understand that if the Customer fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I have read and consent to the terms under the *Privacy Act 1988*, as detailed in Clause 3 of the Credit Application Terms and Conditions. I certify that prior to the execution of the Personal Guarantee and Indemnity Agreement, I have had the opportunity of taking independent legal advice regarding its meaning and effect.

ALL GUARANTORS AND INDEPENDENT WITNESSES SIGN BELOW

Signing of Deed of Personal Guarantee and Indemnity—All Directors, Sole Traders, Business Partners, and any other Guarantors

All Directors, Sole traders and Business Partners and any other Guarantors must complete and sign below as Guarantors in the presence of Independent Witnesses (not Spouses or Family Members).

Directors, Sole Traders, and Business Partners are requested to also sign as Guarantors in the presence of Independent Witnesses.

ALL GUARANTORS SIGN BELOW

(1) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

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(Please tick box) ☐

INDEPENDENT WITNESSES SIGN BELOW (Not Spouses or Family Members)

(1) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

For this application to be deemed fully complete, please ensure that the Tick Box at the left is ticked by all signatories and witnesses 1,2, 3 & 4

(2) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

I Agree to have my identity information verified with the Issuer or Official Record Holder via third party systems for the purpose of verifying my identity

(Please tick box) ☐



(2) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

(3) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

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(Please tick box) ☐



(3) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

(4) SIGNED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

I Agree to have my identity information verified with the Issuer or Official Record Holder via third party systems for the purpose of verifying my identity

(Please tick box) ☐



(4) WITNESSED BY

Signature _____

Print Name of Signatory _____

Mobile Telephone Number _____

Date / /

WARNING: THIS IS AN IMPORTANT LEGAL DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.