

# Marcliff Engineering Co. Pty Ltd

## Application for Commercial Credit

*Including Personal Guarantee & Indemnity Agreement*



# Application for Commercial Credit

## Including Personal Guarantee & Indemnity Agreement

*WARNING: If you do not understand this document, you should seek independent legal advice. Please do not use correction fluid or tape as this is a legal document. Any corrections should be crossed out and initialled.*

Applicant Details (Enter all relevant details pertaining to your business)					
Registered Name					
ACN			ABN		
Trading As (Registered Business if any):					
Company		Sole Trader	Partnership	Other	
Nature of Business			Date of Company Registration:		
Street Address (Not a PO Box)					
State		Postcode			
Postal Address (If Different)					
State		Postcode			
Telephone Number		Fax Number			
Mobile Number		Email Address			
Credit Limit Requested					

Partner, Sole Trader or Director Details (All Applicants MUST Complete)					
	Names of Directors (If Company), Partnership or Sole Trader	Residential Address	Owning or Renting	Date of Birth dd/mm/yyyy	Driver's Licence No.
1					
2					
3					
4					

Contact Details			
Primary Contact	Name:	Email:	Phone:
Accounts Payable	Name:	Email:	Phone:
Sales Contact	Name:	Email:	Phone:

Bank Details			
Bank		Account Name	
Branch		BSB:	Account No.:

--	--	--	--	--

Trade References (Major Suppliers)				
	Name	Email	Phone	Account Number
1				
2				
3				

Has the Applicant of any associated company or person traded with US now or in the past?      Yes       No

**Terms of the Commercial Credit Application and the PPSA**

By signing this Commercial Credit Application, YOU hereby acknowledge and agree that YOU are applying for a Commercial Credit Account with Marcliff Engineering Pty Ltd on the conditions that YOU together with the Marcliff Engineering will constitute a Commercial Credit Agreement between us for the purposes of the Personal Property Securities Act 2009 ("PPSA") and all purchases of goods or services by YOU the customer from Marcliff Engineering the Supplier will be subject to the following terms and conditions of sale which are incorporated into any contract for the provision of goods and/or services by the Supplier (Marcliff Engineering) to the Customer (YOU): -

- Until YOU as the customer have paid in full for any service or goods provided by the Marcliff Engineering the Supplier, no interest or title in any goods shall pass to YOU as the Customer, although risk in the goods passes to YOU the Customer upon delivery. If the goods are delivered to YOU the Customer before payment has been made and title given, YOU the Customer shall have possession of the goods as bailee only. As bailee thereof, YOU the Customer will not dispose of, sell, or grant any security over the goods. YOU the Customer will be responsible for any damage to or loss of the goods. Marcliff Engineering the Supplier may terminate such bailment at any time by giving written notice to YOU the Customer
- If possession of the goods is transferred to YOU the Customer and Marcliff Engineering the Supplier has not received full payment for the goods, then upon YOU the Customer taking possession of the goods, YOU the Customer grants to Marcliff Engineering the Supplier a purchase money security interest ('PMSI') pursuant to the PPSA in the goods; and any proceeds of those goods
- Marcliff Engineering the Supplier shall have the right to register a financing statement for that PMSI pursuant to the PPSA and YOU the Customer agrees to execute any documents and do all other things required by Marcliff Engineering the Supplier to ensure that Marcliff Engineering the Supplier maintains a perfected security interest as that term is defined in the PPSA. YOU the Customer agree that such PMSI will have priority over all other security interests in the goods
- YOU the Customer agrees to pay all costs incurred by the Supplier relating to the registration and/or variation or removal of its security interest; and any enforcement thereof
- YOU the Customer agree that SS 142- 143 of the PPSA will not apply to this Agreement or the security interest granted to Marcliff Engineering the Supplier by YOU the Customer. YOU the Customer hereby waives its rights to receive a:
  - Notice of removal of an accession under S95 PPSA
  - Notice of an intention to seize collateral under S123 PPSA
  - Notice of disposal of collateral under S130 PPSA
  - Statement of account under S132(3)(d) PPSA
  - Statement of account if there is no disposal under S132(4) PPSA
  - Notice of retention of collateral under S135 PPSA
  - Notice of verification statement under S157 PPSA
- Time for payment shall be of the essence. Events of default by YOU the Customer for the purpose of ss23 of the PPSA shall include failure to pay any monies due, the insolvency of YOU the Customer, or a failure by YOU the Customer to comply with any of its other obligations under this Commercial Credit Application. In the event of any such default, all monies payable, whether or not due for payment, shall become immediately payable by YOU the Customer
- Warrant that all information provided by YOU the Customer to Marcliff Engineering the Supplier in relation to this Commercial Credit Application is true and complete and acknowledge that Marcliff Engineering the Supplier rely on the information in making a decision to grant a Credit Account
- By signing this Application for Credit, YOU the customer consent and authorise Marcliff Engineering the supplier: -
  - a. To obtain any information about YOU the customer or commercial credit or business history or YOUR commercial activities or commercial credit worthiness from external credit reporting agencies and or any trade references disclosed in this Application for Credit and any other credit provider for the purpose of assessing the application for credit, or in connection with any guarantee and to disclose such information to a credit reporting agency
  - b. To give a person who is currently guarantor, or whom YOU the Customer have indicated is considering becoming a guarantor, a credit report containing information about YOU the Customer for the purpose of the Guarantor deciding whether to act as guarantor, or to keep the Guarantor informed about the guarantee. You understand we may disclose any information about YOUR credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act
  - c. Unless otherwise prevented by law to collect from, store, use, disclose to or exchange with any parties named above or any Guarantors or other credit providers named in this Application for Credit or named in a consumer credit report issued by a credit reporting agency, third party providers, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved with the collection of trade bills or the factoring of trade debt, information about YOUR personal or commercial credit worthiness or business history in order to assess the Application for Commercial Credit (including whether to accept as Guarantor any person signing), monitor the credit worthiness or withdraw credit facilities, notify your default, issue trade bills, insure risk, process any payment instructions, direct debit facilities and or credit facilities requested by YOU the customer and or Guarantor(s) to enable the daily operation of YOUR Commercial Credit Account and collect overdue monies
  - d. To the extend permitted by law, to disclose the contents of a credit report by a reporting agency to OUR solicitors or mercantile agents

- e. Unless otherwise prevented by law, YOU the customer consent to the use of any personal information provided for the following purposes and any other purposes as shall be agreed between US Marcliff Engineering and YOU the Customer from time to time
- YOU the customer agree to advise Marcliff Engineering the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two (2) business days of such event, change or step occurring. YOU the Customer acknowledges that, despite any such event, change or step YOU the Customer remains liable to pay the price for all Goods Supplied by Marcliff Engineering the Supplier
- YOU the customer agree to pay without any deduction or setoff the price charged by Marcliff Engineering the Supplier for goods supplied to YOU the Customer on receipt or delivery, if credit terms are offered, within thirty (30) Days following the end of the month during which the goods were supplied or provided
  - a. Any amount not paid by the due will incur interest at a rate of 12% per annum calculated daily and compounded monthly
  - b. Payments made by Visa, MasterCard or American Express will attract a 2% surcharge
  - c. Deductions from payments for any reason will not be allowed unless Marcliff Engineering has issued a tax adjustment note. All tax adjustments are issued by Marcliff Engineering the Supplier to YOU the Customer and are not transferable
  - d. YOU the Customer agree to pay all costs and expenses (including legal costs, commissions paid by Marcliff Engineering the Supplier to any commercial or mercantile agent and dishonour fees) incurred by Marcliff Engineering the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 10(c)
  - e. As security for any amounts due to the Marcliff Engineering the Supplier from time to time, YOU the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to Marcliff Engineering the Supplier
- Marcliff Engineering the Supplier reserves the right to require YOU the Customer to spend a minimum dollar amount per year to obtain products or services on a credit account (charged to YOUR account)
- Marcliff Engineering may, in its sole discretion and without requiring any reason to do so, at any time, suspend or terminate YOUR commercial trading account without notice
- Marcliff Engineering specifies the maximum (GST Inclusive) Credit Limit amount that may be charged to the Account over a particular period (Credit Limit). YOUR Credit Limit is subject to review at any time by Marcliff Engineering the Supplier. Marcliff Engineering the Supplier may, on request in writing by YOU the Customer, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any time must not exceed the Credit Limit. Marcliff Engineering is not responsible for any loss or damages whatsoever caused arising from refusal by Marcliff Engineering to supply the YOU the Customer with any products on credit because the Credit Limit has been exceeded. YOU the Customer agrees to immediately pay the amounts charged to YOUR account for any products supplied by Marcliff Engineering in excess of the Credit Limit, whether or not demand for payment has been made by Marcliff Engineering
- YOU the Customer are responsible for and indemnify Marcliff Engineering against any unauthorised use of YOUR account
- All orders are subject to acceptance by Marcliff Engineering the Supplier and hereafter referred to as Marcliff Engineering due to the high cost of processing orders, a minimum order of \$200.00 is required
- Prices are subject to change without notice. Please be aware that orders will be invoiced at the pricing prevailing at the time of the order. Prices are not guaranteed
- No deductions are allowed for freight on back orders. Marcliff Engineering will endeavour to ship the bulk of your order at one time and back ordered products will be shipped as soon as possible thereafter. All back orders are cancelled after three (3) months unless otherwise instructed by YOU the Customer. Part shipments may be made and orders will be considered complete if Marcliff Engineering the Supplier is unable to deliver the entire order. In such event, YOU the Customer waives its right to claim a reduction in price or cancellation of sale
- Freight charges will be applicable to all orders and are subject to change without notice. Any increases in freight and fuel levies that are applied to Marcliff Engineering the Supplier by our freighting sub-contractors will automatically be applied to YOU the customer
- Marcliff Engineering the Supplier is not liable or responsible for loss or damage in transit. Deliveries should be carefully checked upon delivery for total carton count and condition. Any shortage or evidence of damage must be noted on the freight carrier's delivery receipt and reported immediately to Marcliff Engineering. Any short deliveries in unopened cartons that be attributed to picking/packing errors must be reported to Marcliff Engineering within two (2) working days of receipt of goods
- Any items that YOU the Customer consider to be defective must be pre-authorized by Marcliff Engineering the Supplier. All such returns require a return authorisation and must be shipped back to Marcliff Engineering immediate. Authorised returns of products considered to be defective will be subject to inspection by Marcliff Engineering. It must also be noted that Marcliff Engineering reverse the right to refuse credit or replacement should we feel that the product has been mistreated or damaged intentionally
- All returns must be authorised in advance by Marcliff Engineering. All credit claims must be made within two (2) working days of the invoice date. Authorised returns will be assessed at a 15% restocking charge and must be shipped to Marcliff Engineering prepaid by YOU the Customer. There may be additional fees incurred if the product is deemed to have been received in an unsaleable condition (for example un-bagged, product price tagged, other markings on product, etc)

## Acknowledgment

YOU the Customer acknowledge that the Goods it will acquire from Marcliff Engineering Pty Ltd will be obtained for either the purpose of re-supply (whether or not in an altered form or as part of some other manufacture) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures.

### Who MUST sign this Application for Commercial Credit: -

For Companies – Where there is only one (1) director for the company then that person must sign; where there are two (2) or more directors for the company then all Directors MUST sign.

Sole Traders operating under their own name or under a business name.

Partnerships – All Partners of the Partnership.

**YOU the Customer agrees to be bound by the Application for Commercial Credit Account and Conditions as stated above of this Agreement.**

Signatory		Witness (Executed by Independent Witnesses)	
Print Name (in block letters)		Print Name (in block letters)	
Position		Position	
Signature		Signature	
Date	/ /20	Date	/ /20

Print Name (in block letters)		Print Name (in block letters)	
Position		Position	
Signature		Signature	
Date	/ /20	Date	/ /20

**Personal Guarantee & Indemnity Agreement**

As part of your application for Commercial Credit, this Personal Guarantee and Indemnity Agreement must be completed and signed by all Directors, Sole Traders and Business Partners in the presence of an Independent Witness (not Spouses/Partners or Family Members). Spouses/Partners of all Directors, Sole Traders and Business Partners must sign as Guarantors in the presence of Independent witnesses where there is joint ownership of personal assets.

I/We, the Guarantor(s), \_\_\_\_\_  
 \*\*\*Insert Guarantor(s) name as applicable\*\*\*

Have requested Marcliff Engineering the Supplier to supply \_\_\_\_\_  
 \*\*\*Insert Company Name/Partnership/Sole Trader\*\*\*

Trading as (if applicable) \_\_\_\_\_  
 \*\*\*Insert Registered Business Name\*\*\*

(YOU the Customer) of \_\_\_\_\_  
 \*\*\*Insert Street Address (Not a PO Box)\*\*\*      \*\*\*State\*\*\*      \*\*\*Postcode\*\*\*

**With Goods & Services on Credit**

NB: Guarantor(s) names need to agree with those on Certificate of Guarantee – Executed as a Deed Below

The Guarantors hereby **jointly and severally agree** with Marcliff Engineering as follows: -

- I/We guarantee payment to the Marcliff Engineering the Supplier of the whole price charged Marcliff Engineering the Supplier for Goods or Services supplied to US the Customer from time to time, without any deduction or setoff what-so-ever. I/We also guarantee payment of any other monies now or in the future owing by US the Customer to Marcliff Engineering the Supplier. I/We also guarantee the performance of the obligations of US the Customer pursuant to the guarantee given by the US the Customer to Marcliff Engineering the Supplier in the Commercial Credit Account Terms and Conditions
- I/We indemnify Marcliff Engineering the Supplier against all costs, losses and expenses which Marcliff Engineering the Supplier incur as a result of any default by US the Customer.
- My/Our guarantee and indemnity under this Guarantee is a continuing guarantee and will not be affected: -
  - If Marcliff Engineering the Supplier grants any extension of time or other indulgence to US the Customer or varies the terms of account (even if this increases my/our liability under this Guarantee)
  - By the release of any of the Guarantors or if this Guarantee is or becomes unenforceable against one or more of the Guarantors
  - Any Payment by US the Customer being later avoided by law, whether or not I/We have been given notice of the matters
- I/We agree that an application for commercial credit made by the Customer is deemed to have been accepted from the date of the first invoice by the Marcliff Engineering the Supplier to US the Customer and without further notice to me/us, this Guarantee will extend to all liabilities from the Customer to Marcliff Engineering the Supplier
- This Guarantee extends to credit given to the Customer in the future by a company which is not now, but at the time such credit is extended
- This Guarantee may be withdrawn by the Guarantor(s) on expiry of 30 Days following written notice of withdrawal being delivered to Marcliff Engineering the Supplier. This Guarantee will continue in force in respect of all debt incurred up to the date of withdrawal
- I/We authorise Marcliff Engineering to do each of the things listed in Application for Commercial Credit Account Terms and Conditions in relation to my/our personal credit matters

- As security for the obligations and liabilities of the Guarantor(s), I/We charge the due and punctual payment and performance of those obligations and liabilities, all of my/our legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all Real Property in favour of Marcliff Engineering the Supplier
- Without limiting the generality of the charge above, I/We agree on request by Marcliff Engineering the Supplier to execute any documents and do all things reasonably required by Marcliff Engineering the Supplier to register a mortgage security over any Real Property. In the event that the Guarantor(s) fails to deliver the requested documents, the Guarantor(s) hereby appoints Marcliff Engineering to be the Guarantor's(s) lawful attorney for the purposes of executing and registering such documents. I/We indemnify Marcliff Engineering the Supplier on an indemnity basis against all costs and expenses incurred by Marcliff Engineering the Supplier as the case may be in connection with the preparation and registration of such mortgage documents
- I/We consent unconditionally to Marcliff Engineering the Supplier both lodging a caveat or caveats noting its interest in any Real Property
- We agree to advise Marcliff Engineering the Supplier in writing of the occurrence of any Insolvency Event and change in my/our name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of my/our gross assets) as soon as practicable and not later than within two (2) business days of such event, change or step occurring
- If any payment made by or on behalf of the US the Customer is alleged to be void or voidable by any liquidator or like officer of the Customer under any law related to insolvency, I/We indemnify Marcliff Engineering the Supplier against any costs or losses it may incur in connection with such claim. This indemnity shall continue to apply notwithstanding any withdrawal as above
- If a charge created above is or becomes void or unenforceable, it may be severed from this Guarantee without effect on Marcliff Engineering's right against the Guarantor(s)
- Any condition or agreement under this Guarantee by or in favour of two (2) or more persons is deemed to bind them jointly and severally, or be in favour of each of them severally. If the Guarantor comprises more than one person Marcliff Engineering the Supplier may at any time and from time to time, proceed against any or all of them in respect of the Guarantor's obligations as the Marcliff Engineering the Supplier is not obliged to make any claim against all the persons comprising the Guarantor
- Until the whole of the YOUR obligations as the Customer have been paid or satisfied in full, the Guarantor must not (except with the prior written consent of the Marcliff Engineering the Supplier) either directly or indirectly and either before or after the winding up or bankruptcy of the Customer, or any person, take any steps to recover or enforce a right or claim against YOU the Customer relating to any sum paid by the Guarantor to Marcliff Engineering the Supplier under this guarantee including without limitation proving or claiming in competition with Marcliff Engineering the Supplier so as to diminish any distribution, dividend or payment which, but for the proof of claim, Marcliff Engineering the Supplier would be entitled to receive pursuant to the winding up or bankruptcy of YOU the customer
- The definitions in the Application for Commercial Credit Account Terms and Conditions shall apply in this Guarantee, except that "Real Property" shall mean all real property owned by the Guarantor(s) now or in the future, solely or jointly. Also, singular words include the plural and vice versa and references to any party to this Guarantee, include that party's executors, administrators, substitutes, successors or permitted assigns

**Certificate of Guarantee – Executed as a Deed**

By signing below as Guarantor(s), I/We understand the terms of this Guarantee. In particular, I/We understand that if the Customer fails to make any required payments to Marcliff Engineering the Supplier, Marcliff Engineering may recover the amount of these payments from me/us personally. In such case, Marcliff Engineering the Supplier may, amongst other recovery rights, take a charge over any Real Property.

I/We certify that I/We have had the opportunity of taking independent legal advice in relation to the meaning and effect of this Guarantee. All Directors, Sole Traders, Business Partners and any other Guarantors complete, print and sign below as Guarantors in the presence of Independent Witnesses (not Spouses or Family Members)

Spouses of all Directors, Sole Traders and Business Partners must also sign below as Guarantors in the presence of Independent Witnesses.

Guarantor		Witness (Executed by Independent Witnesses)	
Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Signature		Signature	
Date	/ /20	Date	/ /20

Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Position		Position	
Signature		Signature	
Date	/ /20	Date	/ /20

**Mailing Instructions**

For your application to be processed ensure you have completed and signed both the Application for Commercial Credit Form and the Personal Guarantee and Indemnity Agreement. Please return all original and witnessed documents to Marcliff Engineering Co Pty Ltd.

Marcliff Engineering Co. Pty Ltd  
 Attention: Accounts Department  
 PO Box 2998, Taren Point NSW 2229