



Barkly Engineering Pty Ltd
ABN 87 120 075 701
PO Box 2252
Mount Isa Qld 4825
Tel: (07) 4749 2222
Fax: (07) 4749 2297

Application for Credit Account

Nature of Organisation:

Sole Trader Partnership Proprietary Company Trust Other _____

Payment Options:

30 days from end of invoice month 14 days from invoice date

Company Name: _____

Trading Name: _____

Delivery Address: _____

Postal Address: _____

Telephone: () _____ Fax: () _____ Mobile: _____

Registered Office: _____ Email: _____

ABN Number: _____ Paid up Capital: _____

Details of Partners (if Partnership)	Details of Directors (if Proprietary Company)
1. Full Name: _____	1. Full Name: _____
Home Address: _____	Home Address: _____
Home Phone: _____	Home Phone: _____
2. Full Name: _____	2. Full Name: _____
Home Address: _____	Home Address: _____
Home Phone: _____	Home Phone: _____

Contact Person for Accounts: _____

Name and Branch of Bank: _____

Bank Account Number: _____

Solicitors Name and Address: _____

Accountants Name and Address: _____

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. _____ Phone No: _____

2. _____ Phone No: _____

3. _____ Phone No: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf) of Barkly Engineering Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

Signed: _____ Date: _____

(Proprietor/Partner/Director/Authorised Signatory)

Barkly Engineering Pty Ltd– Terms & Conditions of Trade

Definitions

- 1.1 "Agent" shall mean Barkly Engineering Pty Ltd and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Agent to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Agent to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Agent and the Client subject to clause 4 of this contract.
- 2. Acceptance**
- 2.1 Any invoices received by the Agent from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Agent.
- 2.4 None of the Agent's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agent in writing nor is the Agent bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Agent not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).
- 3. Goods**
- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Agent to the Client.
- 4. Price And Payment**
- 4.1 At the Agent's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Agent to the Client in respect of Goods supplied; or
- (b) the Agent's quoted Price (subject to clause 4.2) which shall be binding upon the Agent provided that the Client shall accept in writing the Agent's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Agent's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Agent's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.5 The Agent may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.
- 4.6 At the Agent's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Agent's delivery/payment schedule.
- 4.7 At the Agent's sole discretion, payment for approved Client's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.8 At the Agent's sole discretion, for certain approved Clients payment will be due fourteen (14) days following the date of the invoice.
- 4.9 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 4.10 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Agent.
- 5. Delivery Of Goods / Services**
- 5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Agent's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Agent for the purpose of transmission to the Client, is deemed to be delivery of the Goods to the Client.
- 5.3 The costs of carriage and any insurance which the Client reasonably directs the Agent to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 5.4 The Agent may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.5 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
- 6.1 If the Agent retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Agent is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 7. Client's Disclaimer**
- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Agent and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Agent shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.
- 8. Defect/Returns**
- 8.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods do not conform to the description or quote. The Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Client has complied with the provisions of clause 8.1;
- (b) the Goods are returned at the Client's cost within three (3) days of the delivery date;
- (c) the Agent will not be liable for Goods which have not been stored or used in a proper manner;
- (d) the Goods are returned in the condition in which they were delivered.
- 9. Warranty**
- 9.1 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Agent as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Agent shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

- 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11. Intellectual Property**
- 11.1 Where the Agent has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Agent, and shall only be used by the Client at the Agent's discretion.
- 11.2 Conversely, in such a situation, where the Client has supplied drawings, the Agent in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Agent).
- 11.3 Where any designs or specifications have been supplied by the Client for manufacture, by or to the order of the Agent then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 11.4 The Client warrants that all designs or instructions to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Client's order.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all the Agent's costs and disbursements including on a solicitor and own client basis and in addition all of the Agent's nominee's costs of collection.
- 12.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the goods or services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; then without prejudice to the Agent's other remedies at law
- (i) the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Agent shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- 13. Title**
- 13.1 It is the intention of the Agent and agreed by the Client that property in the Goods shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods, and
- (b) The Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client, and that the Goods shall be kept separate until the Agent shall have received payment and all other obligations of the Client are met.
- 13.2 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from the Agent to the Client the Agent may give notice in writing to the Client to return the Goods or any of them to the Agent. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease. If the Client fails to return the Goods to the Agent then the Agent or the Agent's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are stored or taken possession of the Goods, without being responsible for any damage thereby caused.
- (c) The Client is only a bailee of the Goods and until such time as the Agent has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods in trust for the Agent.
- (d) The Client shall not deal with the money of the Agent in any way which may be adverse to the Agent.
- (e) Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Agent's ownership of rights in respect of the Goods shall continue.
- (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Agent.
- (g) The Agent may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Agent arising out of these terms and conditions, and the Agent may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Agent can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- (i) Until such time the Client has the Agent's authority to convert the Goods into other products and if the goods are so converted, the parties agree that the Agent will be the owner of the end products.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause 14.1 (a) and (b) inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Agent and/or the Agent's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Agent and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Agent and further to do and perform all necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in the Agent's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 The Agent may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 At the Agents sole discretion the Client may cancel delivery of the Goods. In the event that the Client cancels delivery of the Goods the Client shall be liable for any costs incurred by the Agent up to the time of cancellation.

- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor's agree for the Agent to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor's in relation to credit provided by the Agent.
- 16.2 The Client and/or the Guarantor's agree that the Agent may exchange information about Client and Guarantor's with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
- (b) To notify other credit providers of a default by the Client;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
- (d) To assess the credit worthiness of Client and/or Guarantor's.
- 16.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that Personal Data provided may be used and retained by the Agent for the following purposes and for other purposes as shall be agreed between the Client and Agent or required by law from time to time:
- (a) provision of Services & Goods;
- (b) marketing of Services and/or Goods by the Agent, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services & Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 16.5 The Agent may give, information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17. Unpaid Agent's Rights To Dispose Of Goods**
- 17.1 In the event that:
- (a) the Agent retains possession or control of the Goods; and
- (b) payment of the Price is due to the Agent; and
- (c) the Agent has made demand in writing of the Client for payment of the Price in terms of this contract; and
- (d) the Agent has not received the Price of the Goods;
- then, whether the property in the Goods has passed to the Client or has remained with the Agent, the Agent may dispose of the Goods and may claim from the Client the loss to the Agent on such disposal.
- 18. Lien & Storage in Transit**
- 18.1 Where the Agent has not received or been tendered the whole of the price, or the payment has been dishonoured, the Agent shall have:
- (a) a lien on the goods;
- (b) the right to retain them for the price while the Agent is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale;
- (e) the foregoing right of disposal, provided that the lien of the Agent shall continue despite the commencement of proceedings or judgement for the price having been obtained.
- 19. Building and Construction Industry Payments Act 2004**
- 19.1 At the Agent's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 20. General**
- 20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 All Goods supplied by the Agent are subject to the laws of Queensland and the Agent takes no responsibility for changes in the law which affect the Goods supplied.
- 20.3 The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.
- 20.4 In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Agent exceed the Price of the Goods.
- 20.5 The Client shall not set off against the Price amounts due from the Agent.
- 20.6 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Agent reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Agent notifies the Client of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.