



# Commercial Credit Application and Credit Terms

## SECTION 1: NAME/ADDRESS OF APPLICANT AND CREDIT SOUGHT

I/We the undersigned, request that Con-Serv Corporation Australia Pty Ltd ACN 010 372 639 ("Con-Serv") open a Credit Account in the name of:

Business Name: \_\_\_\_\_  
 Legal Name of Applicant: \_\_\_\_\_ (the "Buyer")  
 Business Address: \_\_\_\_\_  
 Postal Address: \_\_\_\_\_  
 Tel no.: (\_\_\_\_) \_\_\_\_\_ Fax No.: (\_\_\_\_) \_\_\_\_\_ Amount of Credit Required: \$ \_\_\_\_\_

### CONTACT NAMES:

(Accounts) \_\_\_\_\_ (Purchasing) \_\_\_\_\_

## SECTION 2: BUSINESS DETAILS

Nature of Buyer's Business: \_\_\_\_\_ No. of staff (excl. Partners/Directors): \_\_\_\_\_  
 Type of Business (Tick appropriate box): Sole Trader:  Partnership:  Public Company:  Private Company:  Trustee Company:   
 If a Company (including Trading Name if owned by a Company);  
 ABN No: \_\_\_\_\_ ACN: \_\_\_\_\_ Paid up Capital: \$ \_\_\_\_\_  
 Registered Name of Company: \_\_\_\_\_  
 Registered Office Address: \_\_\_\_\_  
 Date Business Established or Incorporated: \_\_\_\_\_ How long under present ownership: \_\_\_\_\_  
 Are Premises shown above as Business Address Owned, Being Purchased or Rented: \_\_\_\_\_  
 Banker: \_\_\_\_\_ BSB: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 A/C No: \_\_\_\_\_

## SECTION 3: TRADE/CREDIT REFERENCES FOR BUSINESS:

- Company: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_  
 Expected Annual Purchases: \$ \_\_\_\_\_
- Company: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_  
 Expected Annual Purchases: \$ \_\_\_\_\_

## SECTION 4: NAME OF SOLE TRADER, PARTNERS OR DIRECTORS:

(Details of all partners or directors must be provided)

- Full Name: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 Position Held: \_\_\_\_\_  
 Private Address: \_\_\_\_\_
- Full Name: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 Position Held: \_\_\_\_\_  
 Private Address: \_\_\_\_\_
- Full Name: \_\_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_\_  
 Position Held: \_\_\_\_\_  
 Private Address: \_\_\_\_\_

## SECTION 5: CREDIT TERMS

In consideration of the facilities of a Credit Account being provided by Con-Serv to the Buyer I/we agree:

- 1 payment of account must be made in accordance with Con-Serv's Terms & Conditions for Sale of Goods ("Terms & Conditions") as published and/or as amended and published/circularised from time to time.
- 2 interest is calculated per month at the rate of two (2%) per cent and applies to any overdue amounts from the date those amounts became due until the date payment is received in full by Con-Serv.
- 3 credit facilities may be withdrawn at Con-Serv's discretion without notice.
- 4 that in the event the account is in default of the Terms & Conditions, I/We indemnify Con-Serv, against all its collection costs and legal costs/expenses as a result of the matter being referred out to a Collection Agent and/or Solicitor for recovery.
- 5 that all quotations, orders and sale and dispatch of Goods (as defined in clause 1 of the Terms & Conditions) shall be subject to the Terms & Conditions as incorporated in this Credit Application or as amended and published/circularised from time to time.
- 6 and undertake to comply with the above CREDIT TERMS.

## SECTION 6: ACKNOWLEDGEMENTS, DECLARATION AND CONSENTS

I/WE, the undersigned, acknowledge and declare and/or consent to:

- (a) that the information provided in this Credit Application is true and correct, that the Buyer seeking credit is able to pay all debts as they become due and that the Buyer (and any partner or director of the Buyer) has never been bankrupt, executed a Scheme or Deed of Arrangement or compromised with creditors, or been a Director of any Company which has had an Agent for Mortgagee in Possession, Receiver or Official manager appointed, or Entered into a Scheme of Arrangement or Composition with its creditors or gone into Liquidation.
- (b) that any Credit Account that may be provided by Con-Serv to the Buyer pursuant to this Credit Application (and any Goods provided by Con-Serv pursuant to any such Account) is for business and commercial purposes and will be used wholly or predominantly for business and commercial purposes.
- (c) Privacy Act Notifications and Consent. I/we acknowledge that I/we am/are informed of the following matters:
  1. Con-Serv collects personal information about individuals if it is necessary for one or more of Con-Serv' functions or activities. In Con-Serv's activities as a credit provider Con-Serv collects credit-related information ("credit information") about individuals.
  2. A detailed summary of the kinds of credit information that Con-Serv collects about individuals is set out in Con-Serv's Credit Reporting Privacy Policy available via its website at: [www.con-serv.com.au](http://www.con-serv.com.au) and I/we have had the opportunity to read that policy. However, in short, credit information about an individual includes information about the individual's credit history and credit worthiness and is used by Con-Serv for the purposes detailed below.
  3. With the consent of the individual, Con-Serv collects credit information (including credit eligibility information) about individuals from other credit providers and/or trade suppliers for such purposes as: processing and assessing applications for commercial credit accounts; assessing the provision of credit and the amount of any credit; and the recovery of any overdue amounts.
  4. If such credit information about individuals associated with the Buyer is not collected by Con-Serv then Con-Serv cannot properly process or consider applications for credit accounts such that Con-Serv will not be able to process the application and decide to or not to grant a commercial credit account and, if credit is granted, administer the account.
  5. With the consent of the individual, Con-Serv may disclose credit information to other credit providers and/or trade suppliers for such purposes as: processing and assessing applications for commercial credit accounts; assessing the provision of credit and the amount of any credit; and the recovery of any overdue amounts.
  6. Con-Serv has a Credit Reporting Privacy Policy which is available at [www.con-serv.com.au](http://www.con-serv.com.au) which contains information about the following:
    - how an individual may access the credit eligibility information about the individual held by Con-Serv;
    - how an individual may seek the correction of credit information about the individual that is held by Con-Serv;
    - how an individual may complain about a failure of Con-Serv to comply with its obligations under Part IIIA of the *Privacy Act* or the Credit Reporting Code and how Con-Serv will deal with such a complaint;
    - that Con-Serv is not likely to disclose credit information to any overseas entities that do not have an Australian link.

For the purposes of processing of this application for a commercial credit account, assessing the ongoing provision of credit and/or the recovery of any overdue account, whether or not in connection with any guarantee, by each individual signing this application, I/we hereby expressly give my/our consent to Con-Serv, its successors and/or assigns to:

- (i) obtain credit information and credit eligibility information about me/us and/or the Buyer from any other credit provider or trade supplier;
- (ii) use, disclose or exchange with other credit providers or trade suppliers credit eligibility information about me/us and/or the Buyer,

and I/we further agree that if Con-Serv approves this application, this consent remains in force until all rights under any credit facility granted as a result of this application cease.

## SECTION 7: SIGNING (Note: for partnerships, all partners must sign; for companies, all directors are required to sign)

1. Signature  
Applicant: \_\_\_\_\_  
Print Full Name: \_\_\_\_\_  
Position Held: \_\_\_\_\_  
Date: \_\_\_\_\_  
Witness's  
Signature: \_\_\_\_\_  
Witness's Name and Address: \_\_\_\_\_
2. Signature  
Applicant: \_\_\_\_\_  
Print Full Name: \_\_\_\_\_  
Position Held: \_\_\_\_\_  
Date: \_\_\_\_\_  
Witness's  
Signature: \_\_\_\_\_  
Witness's Name and Address: \_\_\_\_\_

**CON-SERV CORPORATION AUSTRALIA PTY LTD ACN 010 372 639**  
**TERMS AND CONDITIONS FOR THE SALE OF GOODS**

**1 TERMS AND CONDITIONS TO APPLY**

Con-Serv Corporation Australia Pty Ltd (ACN 010 372 639) ("**Con-Serv**") and the buyer ("**Buyer**") agree that these terms and conditions ("**Terms & Conditions**") shall apply to the supply of all goods and services sold ("**Goods** ") by Con-Serv to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to Con-Serv. These Terms & Conditions supersede those in any previous form. The Buyer acknowledges and agrees that these Terms & Conditions may be varied from time to time and agrees to be bound by such varied Terms & Conditions.

**2 QUOTATIONS**

If Con-Serv has provided any quotation specifically for Goods, whether in writing or orally ("**Quotation**"):

- (a) These Terms & Conditions shall apply to the Quotation;
- (b) The Quotation shall remain valid for acceptance by the Buyer in writing for six (6) months after the date of the Quotation;
- (c) The Quotation will detail any charges for delivery of the Goods; and
- (d) The price in the Quotation shall be Con-Serv's current price as at the date of Quotation and the price actually payable for the Goods shall be Con-Serv's current price as at the date of the Buyer's acceptance of the Quotation.

**3 ORDERS**

If the Buyer has made an order for Goods without there being a Quotation provided by Con-Serv ("**Order**") the Order is subject to acceptance in writing by Con-Serv.

**4 VARIATION OR CANCELLATION**

After the Buyer's acceptance of the Quotation or Con-Serv's acceptance of the Order:

- (a) no change in the specification of Goods shall bind Con-Serv, unless Con-Serv expressly agrees to the change in writing; and
- (b) if the Buyer cancels or suspends the Order or Quotation after acceptance, the Buyer will pay Con-Serv any loss, damage or expenses incurred by Con-Serv in relation to the supply or proposed supply of the Goods.

**5 CHARGE AND TAXES**

- (a) The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods supplied and hereby indemnifies and holds harmless Con-Serv from any liability on account of any and all such taxes, levies, duties, assessments and deductions; and
- (b) Unless otherwise expressly agreed by, or shown on an invoice issued by Con-Serv, the prices specified include GST. The Buyer must bear and pay all GST or any other tax or duty that may be imposed on or in relation to any supply.

**6 PAYMENT**

- (a) The Buyer shall pay for Goods within thirty (30) days from the closing date of the invoice issued by Con-Serv for the Goods. Time shall be of the essence in respect of payment for the Goods.
- (b) If payment is not made by the due date for payment, the Buyer shall pay to Con-Serv on demand interest at the rate of two percent (2%) per month until paid. This will not affect the other rights of Con-Serv.
- (c) The Buyer is not entitled to set off or withhold any payments to Con-Serv.
- (d) Con-Serv is entitled to recover from the Buyer, in addition to the price, any GST on the supply of the Goods except to the extent that the prices expressly include GST.
- (e) Con-Serv is entitled to recover from the Buyer, in addition to the price all losses, expenses, costs (including legal fees) on an indemnity basis and disbursements, consequent upon the Buyer's failure to pay on the due date, are recoverable from the Buyer by Con-Serv as a liquidated debt.

**7 DELIVERY/FREIGHT**

- (a) Con-Serv will use all reasonable endeavours to deliver the Goods on or before the agreed date for delivery ("**Delivery Date**"), but:
  - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Con-Serv; and
  - (ii) Con-Serv will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods not being delivered by the Delivery Date for any reason.
- (b) The Buyer will be charged for all costs related to delivery and such costs will be detailed on the tax invoice provided to the Buyer.
- (c) The Buyer must ensure that sufficient access (including road surfaces capable of withstanding heavy loads) is provided at the place of delivery to enable the Goods to be delivered.
- (d) Con-Serv may, with the agreement of the Buyer, deliver Goods to the Buyer in instalments and in which case Con-Serv may separately

invoice the Buyer for payment for each delivery instalment (which shall be taken to be the subject of a separate and distinct contract between the parties).

- (e) Any Goods returned are only accepted with the prior written approval of Con-Serv and may be subject to a 15% handling/restocking fee. "Freight collect" charges for returned Goods will be deducted from any credit note issued to the Buyer unless Con-Serv has agreed in writing in advance to accept the Freight collect charges.
- (f) Stock will only be accepted for return if it is undamaged and in its original packaging and condition.
- (g) The Buyer agrees to provide, at the Buyer's expense (if requested by Con-Serv) assistance in unloading heavy Goods during delivery.
- (h) Goods which have been specifically manufactured by Con-Serv or altered by the Buyer cannot be returned simply because the Buyer has changed their mind;
- (i) The Buyer will be responsible for the offloading of Goods and the Buyer indemnifies Con-Serv against all claims whatsoever arising from the unloading of Goods.

**8 RISK AND PROPERTY IN GOODS**

- (a) For the purposes of the Personal Property Securities Act 2009 (as amended from time to time) (the "PPSA") "Goods" means any and all present and after acquired goods supplied by Con-Serv to the Buyer;
- (b) The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Buyer from the time of dispatch of the Goods (the carrier of the Goods shall be taken to be the agent of the Buyer).
- (c) Con-Serv retains full title to the Goods until Con-Serv receives payment in full for the Goods and all other amounts owed by the Buyer to Con-Serv.
- (d) Until all such monies have been paid:
  - (i) Con-Serv has the right to call for or recover possession of the Goods (for which purpose Con-Serv's employees or agents may enter onto the Buyer's premises) and the Buyer must deliver up the Goods if so directed by Con-Serv;
  - (ii) the Buyer:
    - (A) agrees that the relationship between the Buyer and Con-Serv shall be fiduciary and the Buyer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Con-Serv;
    - (B) has the right to resell the goods in the ordinary course of the Customers business as Con-Serv's fiduciary agent but must not otherwise dispose of or encumber the goods;
    - (C) shall not mix the Goods or otherwise make them unable to be returned to Con-Serv in their original state;
    - (D) agrees that if the Goods are incorporated with goods of the Buyer, the resultant product shall become and be deemed to be the sole property of Con-Serv. If the Goods are incorporated in any way with the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by Con-Serv with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials; and
    - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Buyer) in breach of this clause in trust for Con-Serv and shall pay the proceeds into a separate fiduciary account to be held in trust for Con-Serv until accounted for to Con-Serv at the demand of Con-Serv.
- (e) To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 7 that there is created for the benefit of Con-Serv a security interest and a Purchase Money Security interest in the Goods;
- (f) The Buyer agrees that Con-Serv may register any personal property security interest created by the Terms & Conditions on the Personal Property Securities Register and the Buyer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Con-Serv in respect of any personal property of the Buyer. Con-Serv and the Buyer agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Buyer or place an obligation on Con-Serv, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that Con-Serv otherwise agrees in writing.

**9 LIABILITY**

The Buyer agrees that:

- (a) the Buyer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any advice description of Goods or information provided by or on behalf of Con-Serv in connection with Goods or the Terms & Conditions;

- (b) except to the extent prohibited by law, the only remedy of the Buyer against Con-Serv for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Buyer in connection with the Terms & Conditions, the Goods, Con-Serv's supply of the Goods or Con-Serv's failure to supply the Goods to the Buyer in accordance with the Terms & Conditions shall be limited to Con-Serv, at its option, replacing the Goods; and
- (c) Con-Serv shall otherwise have no liability to the Buyer whether in contract, tort, negligence or otherwise.
- (d) Water board requirements are not uniform throughout Australia. Con-Serv do not accept any responsibility for any damage or claims resulting from the installation of Goods where the installation does not conform with Water board requirements for the Australian state in which the installation was performed.

#### 10 DEFECTIVE GOODS

- (a) Within ten (10) days after the delivery of the Goods the Buyer shall both complete any inspection required by it to confirm the Goods comply with the Terms & Conditions and notify Con-Serv in writing (detailed the tax invoice number and date) of the extent to which the Goods do not comply with the Terms & Conditions.
- (b) The Buyer shall not use the Goods (other than to the extent reasonably necessary for the inspection) before the Buyer completes the inspection and testing and satisfies itself that the Goods comply with the Terms & Conditions, or, if the Buyer notifies Con-Serv in writing that the Goods do not comply with the Terms & Conditions, Con-Serv has had a reasonable opportunity to inspect and test the Goods after Con-Serv receives that notice.
- (c) If the Buyer does not comply with clause 9(a), the Buyer shall be taken to have unconditionally accepted the Goods and the Buyer must comply with the Terms & Conditions.

#### 11 CHARGING CLAUSE

- (a) To secure payment of all monies which are or may become payable by the Buyer to Con-Serv under these Terms & Conditions the Buyer (or where the Buyer is comprised of two or more persons or other entities then each person and other entity jointly and severally) hereby charges as beneficial owner and as trustee of any trust in favour of Con-Serv all the Buyers' right, title and interest in land (held now or in the future) ("Buyer's land") with the due payment of all of those monies. The Buyer acknowledges that Con-Serv may register a caveat or caveats over the Buyer's land in respect of this charge.
- (b) If the Buyer is a trustee of any trust:
  - (i) it is bound by these Terms & Conditions and charges the Buyer's land as trustee;
  - (ii) warrants that it is a proper exercise of the Buyer's authority and power under the trust instrument and at law to trade with Con-Serv and to charge the Buyer's land in accordance with these Terms & Conditions.
- (c) Upon demand by Con-Serv, the Buyer agrees to immediately in respect of the Buyer's land execute a mortgage or other instrument in terms satisfactory to Con-Serv to further secure the Buyer's indebtedness to the Con-Serv and the Buyer acknowledges by reason of this agreement to give a mortgage in favour of Con-Serv and that Con-Serv is an equitable mortgagee in respect of the Buyer's land.
- (d) Should the Buyer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Buyer appoints irrevocably the credit manager or a duly authorised officer of Con-Serv to be the Buyer's lawful attorney to execute any such mortgage or other instrument.

#### 12 TRUST AND TRUSTEES

Where the Buyer is a trustee of any trust:-

- (a) The Buyer agrees to produce immediately to Con-Serv a stamped copy of the trust deed (including all amendments) upon written notice from Con-Serv.
- (b) The Buyer warrants that it has full power and authority to enter into these Terms & Conditions on behalf of the trust and that it shall be bound by these Terms & Conditions both personally and as trustee and clause 11 extends to any land held by the Buyer as trustee.

#### 13 BUYER SPECIFICATION/SPECIAL ORDERS/INTELLECTUAL PROPERTY

- (a) If any Goods are manufactured by Con-Serv to the design or specification of the Customer, the Buyer warrants to Con-Serv that any drawings, plans, specifications and other design information provided to Con-Serv for the manufacture of such Goods are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of the third party;
- (b) Where the design of Goods supplied by Con-Serv to the Buyer is provided by the Buyer (or its nominee) to Con-Serv, or the design is provided by Con-Serv in accordance with specifications provided by the Customer, the Buyer will accept sole responsibility for the design and is responsible for the suitability for the Goods for the purposes for which they were designed and acquired;
- (c) "Proprietary Information" means any and all information relating to Goods and/or the installation or operation of Goods (including all

intellectual property therein) supplied by Con-Serv to the Buyer and the Buyer acknowledges that all Proprietary Information and all right title and interest therein are the sole property of or licensed by Con-Serv and the Buyer shall gain no right title or interest in the Proprietary Information whatsoever. The Buyer specifically acknowledges Con-Serv's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed supplied installed or paid for by or on behalf of the Customer;

- (d) The Buyer agrees to indemnify Con-Serv in respect of any loss, damage, expense, claim or liability suffered or incurred by Con-Serv as a result of any claim by a third party asserting infringement of any intellectual property rights in relation to such Goods or any breach by the Buyer of this clause 18 or any claims against Con-Serv arising out of any matters referred to in this clause 18.

#### 14 NO EXPORT

- (a) Unless otherwise agreed in writing by Con-Serv, any Goods supplied to the Buyer are intended for use in Australia only such that if any such Goods are exported by the Buyer, it is the responsibility of the Buyer to ensure those Goods comply with the laws of any foreign country to which the Goods are exported.
- (b) The Buyer agrees to indemnify Con-Serv in respect of any loss, damage, expense, claim or liability suffered or incurred by Con-Serv as a result of any breach by the Buyer of this clause 14 or any claims against Con-Serv arising out of any matters referred to in this clause 14.

#### 15 DEFAULT, INSOLVENCY AND TERMINATION

If the Buyer:

- (a) commits a substantial breach of the Terms & Conditions including unreasonably refusing to accept any Goods or failing to pay for any Goods, in accordance with the Terms & Conditions; or
- (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,

Con-Serv may, without affecting Con-Serv's other rights:

- (c) immediately terminate the supply of the Goods, by notice in writing to the Buyer;
- (d) refuse, suspend or withhold any further Goods;
- (e) enter upon (personally or by its employees or agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Buyer), in which case the sale of those Goods shall be taken to be terminated and Con-Serv shall have no liability to the Buyer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (f) terminate any credit arrangement with the Buyer, by notice in writing to the Buyer (in which case outstanding amounts will become immediately due and payable);

#### 16 GOVERNING LAW

The laws of the State of Queensland shall apply to the Terms & Conditions and the parties submit to the exclusive jurisdiction of the Courts in Brisbane.

#### 17 NON-WAIVER

Con-Serv's failure to exercise any right under the Terms & Conditions or failure to insist on strict performance of any part of the Terms & Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

#### 18 SEVERANCE

If any part of these Terms and Conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

#### 19 NOTICES

- (a) Notices required to be given by the Buyer to Con-Serv pursuant to these Terms and Conditions may be delivered to Con-Serv:
  - (i) personally or by post to Con-Serv at 17 Glentanna Street, Kedron, Queensland 4031; or
  - (ii) by email to Con-Serv at mail@con-serv.com.au.
- (b) Notices will be taken as delivered when received by Con-Serv.
- (c) Notices required to be given by Con-Serv to the Buyer pursuant to these Terms and Conditions may be delivered:
  - (i) by post to the Buyer's last known address (and shall be taken as delivered on the second business day following posting); or
  - (ii) by email to the Buyer's last known email address.