

ABN : 50-008 458 884  
 ACN : 008 458 884

Email : [accounts@crkennedy.com.au](mailto:accounts@crkennedy.com.au)  
[www.crkennedy.com.au](http://www.crkennedy.com.au)

Please return this form completed to the originating office marked

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|--|---|--|---|---|--|
| <input type="checkbox"/> <b>Head Office:</b><br>300 Lorimer St,<br>Port Melb, VIC 3207<br>Tel (03) 9823 1555<br>Fax (03) 9823 1592 | <input type="checkbox"/> <b>New South Wales:</b><br>Lvl 2, 15 Bourke Rd<br>Mascot, NSW 2020<br>Tel (02) 9552 8300<br>Fax (02) 9552 8399 | <input type="checkbox"/> <b>Queensland:</b><br>80 Kingsford Smith<br>Drive<br>Albion, QLD 4010<br>Tel (07) 3862 6222<br>Fax (07) 3862 6224 | <input type="checkbox"/> <b>South Australia:</b><br>77 Fullarton Road<br>Kent Town, SA 5067<br>Tel (08) 8410 0533<br>Fax (08) 8410 1370 | <input type="checkbox"/> <b>Western Australia:</b><br>Unit 1, 5 Gibberd Road<br>Balcatta<br>WA 6021<br>Tel (08) 9489 8500<br>Fax (08) 9489 8501 | <input type="checkbox"/> <b>Cairns:</b><br>Unit 1,131 Scott St<br>Cairns, QLD 4870<br>Tel (07) 4031 5399<br>Fax (08) 4031 5404 |
|--|---|--|---|---|--|

CRK Account Manager: .....

**To: C R Kennedy & Company Pty Ltd & any subsidiary or related entity thereof & any successors &/or assigns thereof ["C R Kennedy"].**

1. **APPLICANT**   
 "Customer"

2. **APPLICATION:** The Customer applies for a Credit Account & agrees to be bound by the Terms & Conditions on page 3 hereof (as amended from time to time and published on the C R Kennedy website: [www.crkennedy.com.au](http://www.crkennedy.com.au)) in all dealings with C R Kennedy.

3. <b>CREDIT LIMIT REQUESTED</b>	\$	4. <b>EXPECTED MONTHLY PURCHASES</b>	\$
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5. **MEANS & ABILITY TO PAY:** The Customer warrants that it is solvent & has the future ability to pay all of its debts as & when they fall due.

6. **ACCEPTANCE:** C R Kennedy will be deemed to have accepted this Application if it allows the Customer to trade on credit with any division or part of C R Kennedy.

7. **OTHER DIVISIONS:** The Customer agrees that this Application relates to all dealings with C R Kennedy.

8. **PURPOSE:** The Customer declares & warrants that Products will be used for commercial purposes & not for the Customer's personal, domestic or household purposes.

9. **PERSON COMPLETING THIS APPLICATION ("Signatory"):**

Position: .....

Name: ..... Address

(private) .....

..... Home tel: .....

**SIGNATURE:** ..... Date: ...../...../.....

(Signed for & on behalf of the Customer)

The Signatory completing this application on behalf of the Customer **REPRESENTS & WARRANTS** that the information set out hereon is true & correct & they are duly authorised to sign this Application on behalf of the Customer & **ACKNOWLEDGES** that C R Kennedy will rely upon & be induced thereby to grant credit &/or to deal with the Customer.

10. **CREDIT INFORMATION:** The Customer & the Signatory irrevocably authorise C R Kennedy, its servants & agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer & the Signatory from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer, any credit provider or Credit Reporting Agency & including personal credit, consumer credit information, LandData property inquiries & name searches ("the Sources"). The Customer & the Signatory hereby authorise the Sources to disclose to C R Kennedy such information concerning the Customer & the Signatory which is within their possession. The Customer & the Signatory agree that the information provided on this Credit Application concerning the Customer & any relevant trading information arising from any dealings between the Customer & C R Kennedy may be disclosed to a Credit Reporting Agency or any other interested person.

11. **GST/BAS:** When does the Customer lodge Business Activity Statements (BAS)?

Monthly?  Quarterly?  Date last BAS lodged?.....

**A. COMPANIES**

Company Name

ACN :

Address for  
Correspondence

Postcode

Registered Office

Directors

	Name	Private Address	Date of Birth	Private Telephone
1.		.....		
2.		.....		
3.		.....		

**B. PARTNERSHIP/SOLE TRADER**

	Name	Private Address	Date of Birth	Private Telephone
1.		.....		
2.		.....		

**C: TRADING DETAILS**

Trading Name

Business Address

Postcode

Address for  
correspondence**D: CONTACT DETAILS**

Telephone ( )

Fax ( )

email:

**E. DATE BUSINESS COMMENCED :**

How long current owner :

**F. ABN NUMBER :****G. TRUSTS**

Is the Customer involved or associated in any way with a Trust (whether Family Trust or Unit Trust)?

Yes No **H. INSOLVENCY**

Has the customer or any of its directors or partners been insolvent or involved in any way with an insolvent (liquidation, receivership, administrator, bankruptcy or Part X etc)?

Yes No **I. TYPE OF BUSINESS**

Government Instrumentality?

Names of Related or Subsidiary Companies or Partnerships

**J. FINANCIAL DETAILS**

Bank

Branch

Phone No:

Are the Business Premises owned?

Yes

No:

If leased, details of who you pay : Name :

Contact No :

Turnover last financial year : \$

No: of employees :

**K. TRADE REFERENCES**

(must be similar value to level of Credit sought)

Company	Telephone No:	Fax No :

**1. Payment** is to be made by cash, cheque, bank cheque or EFT without deduction, within 30 days of month end of month in which invoice was dated.

**2. Interest** will be charged on overdue accounts at the rate prescribed under the Penalties Interest Rates Act 1983 (Vic) rate plus an additional 2%.

**3. Property:** a) Property in the Products shall not pass to the Customer until payment in full of all monies owed by the Customer to C R Kennedy ("full payment") who reserves the right to take possession & dispose of Products as it sees fit at any time until full payment b) The Customer grants permission to C R Kennedy to enter any property where any Products are in order to do so & with such force as necessary c) Immediately upon delivery the Customer accepts liability for the safe custody of the Products & agrees to indemnify C R Kennedy for any losses relating thereto d) Upon sale or disposition of any Products prior to full payment, the Customer agrees to deposit all proceeds in a separate bank account, agrees not to mix proceeds with any other monies & will account to C R Kennedy therefore notwithstanding that C R Kennedy may have at any time granted any credit facility &/or time to pay e) Until full payment the Customer agrees (i) to keep all Products unpaid for as fiduciary for C R Kennedy & store them in a manner which shows C R Kennedy as owner (ii) only to sell Products in the usual course of its business on condition that the Customer holds all proceeds in trust for C R Kennedy (iii) sale on terms or for less than cost shall not be "in the usual course" f) This clause 3 is not intended to create a charge over any Products & shall be read down (but only to the extent necessary) to avoid creating a charge g) The Customer agrees Products will not become or be deemed fixtures to anything at any time & will be deemed to be dealt with on a "first in/first out" basis in all dealings with C R Kennedy h) If the Customer incorporates any Products in any process or manufacture or combines them with anything to create a finished or combined new thing, then upon any sale or disposition of such new thing prior to full payment, the Customer agrees to hold such part of the proceeds thereof (& until payment is received, that part of any applicable book debt of the Customer) as equals the costs of the Products incorporated therein. (at the prices invoiced to the Customer by C R Kennedy) upon trust for C R Kennedy until full payment.

**4. Limitation of Liability:** a) The Customer agrees to limit any claim it makes concerning any Products to the cost of replacement thereof b) C R Kennedy shall not be liable for any claim loss or expense arising which is made after 7 seven days from date of delivery (or at all once Products have been unpacked or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance c) C R Kennedy will not be liable in any way for any contingent consequential direct or indirect special or punitive damage arising in any way & whether due to C R Kennedy's negligence or otherwise & the Customer acknowledges this express limit of liability & agrees to limit any claim accordingly d) No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied in any way extending to or otherwise relating to or binding upon C R Kennedy, other than these Terms, is made or given.

**5. Exclusions:** a) Sample: No dealing between C R Kennedy & the Customer shall be or be deemed to be a sale by sample b) If C R Kennedy publishes material concerning its Products & prices anything so published which is incompatible with these Terms is expressly excluded c) the Customer will rely on its own knowledge & expertise in selecting any Products for any purpose, & any advice or assistance given for or on behalf of C R Kennedy shall be accepted at the Customer's risk & shall not be or be deemed to be given as expert or adviser nor to have been relied upon by the Customer or anyone claiming through the Customer. d) If C R Kennedy sells any Products manufactured or processed by another, it shall not be liable to any party for any damages arising in relation to the manufacture or process but will use reasonable endeavours to assist the Customer to make any appropriate claim on the manufacturer or processor under any warranty applicable.

**6. Returns:** Products are not returnable. If C R Kennedy elects to take back any Product it must be in as new & saleable condition & upon terms agreed & a re-stocking fee of not less than 20% of invoice value will apply.

**7. Specific Orders:** a) Custom made or custom ordered Products acquired by C R Kennedy specifically for the Customer will not be returnable b) such specific orders may be rejected by C R Kennedy unless accompanied by a non-refundable deposit of at least 50% of the total order price c) the Customer acknowledges & agrees that it is the Customer's sole responsibility to ensure that anything which is provided by or on behalf of the Customer, to be used by C R Kennedy in meeting any orders is correct & appropriate in every particular & acknowledges that this will be relied upon by C R Kennedy.

**8. Placement of Orders:** The Customer agrees a) in the event of any dispute arising over any order (including any question of identity, authority, any telephone, facsimile, e-commerce, email or computer order) that the internal records of C R Kennedy will be conclusive evidence of what was ordered in all respects b) each order it places shall be & be deemed to be a representation made at that time that it is solvent & able to pay all of its debts as & when they fall due c) failure to pay C R Kennedy in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation & the representation was unconscionable, misleading & deceptive d) when any order is placed, the Customer shall inform C R Kennedy of any facts which might reasonably affect the decision by C R Kennedy to accept the order &/or grant credit in relation to it. Failure to do so by or on behalf of the Customer shall create & be deemed to create an inequality of bargaining position, shall constitute & be deemed to constitute the taking of an unfair advantage & to be unconscionable, misleading & deceptive.

**9. Purchase Price:** a) All sales are made by C R Kennedy at its ruling price at the time of delivery b) Government imposts, including any GST will be to the Customer's account c) Price lists exclude all imposts unless expressly noted thereon.

**10. Delivery:** The Customer acknowledges & agrees a) C R Kennedy accepts no responsibility or duty for delivery, but may elect to arrange delivery at its discretion & without any liability & at the Customer's costs & responsibility in all things b) C R Kennedy reserves the right to charge for any delivery c) the Customer shall be deemed to have accepted delivery & liability for the Products when C R Kennedy notifies the Customer that they are ready for collection or they are delivered to a carrier for delivery or to the Customer's business premises or site whether attended or not.

**(10 ....cont) d)** The Customer agrees that a certificate purporting to be signed by an officer of C R Kennedy confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket e) C R Kennedy will not be liable for delay, failure or inability to deliver f) once notified that Products are ready for collection or delivery, the Customer will pay all subsequent costs of C R Kennedy in holding them.

**11. Product Characteristic:** a) C R Kennedy makes no representation as to fitness or suitability of any Products for any purpose b) The Customer will check all Products for compliance with all relevant standards & regulatory requirements, before any use or application c) The Customer agrees to use &/or apply the Products in accordance with all such standards & regulations, with all the manufacturers recommendations & directions as well as with sound commercial practice & in the knowledge that it is delicate equipment & susceptible to adverse conditions (eg; heat, dust, rain, cold, direct sunlight, contaminants, chemicals, fuels etc) &/or mishandling d) All Products used or applied in or for any medical or medical related activity must only be used or applied under the supervision & direction of a duly qualified & responsible medical physician & in compliance with all applicable laws & requirements of authorities

**12. Publications:** If any warranty, document, disclaimer, instruction, warning or otherwise is published which relates in any way to any Products, whether by the manufacturer &/or C.R. Kennedy or otherwise, the Customer agrees that each publication will apply in conjunction with these Terms if there is no conflict or contradiction but that these Terms will prevail if there is any conflict or contradiction to the extent needed to resolve the conflict or contradiction.

**13. Insurance:** a) The Customer agrees to insure C.R. Kennedy from liability arising in any way under part VA of the Trade Practices Act, which insurance will note the insured interest of both the Customer & C.R. Kennedy. b) The Customer also will fully indemnify C.R. Kennedy in relation to any loss, damage or claim whatsoever made against C.R. Kennedy under any provision of part VA of the Trade Practices Act.

**14. Other Terms & Conditions:** No terms & conditions sought to be imposed by the Customer upon C R Kennedy shall apply unless agreed by C R Kennedy in writing.

**15. Recovery Costs:** The Customer will pay the costs & expenses incurred by C R Kennedy or its solicitors, legal advisers, mercantile agents & other parties acting on its behalf in respect of anything instituted or being considered against the Customer whether for debt recovery, possession of any Products, action arising from any breach of these Terms, claims for loss & damage or otherwise.

**16. Attornment:** For the purpose of giving effect to the Customer's obligations arising under these Terms, the Customer hereby irrevocably appoints any solicitor acting for C R Kennedy from time to time, as its attorney in all things.

**17. Variation** of these Terms must be agreed in writing other than as set out in paragraph 24.

**18. Defaults.** Upon any default or breach hereof by the Customer, C R Kennedy may retain all monies paid &/or cease deliveries &/or recover from the Customer all loss of profits arising &/or at its discretion take immediate possession of any Product not paid for, without prejudice to any other of its rights & without being liable to any party

**19. Severability:** - Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

**20. Customer Restructure:** The Customer will notify C R Kennedy in writing of any change in its structure or management including any change of director, shareholder, management or change in partnership or trusteeship within 7 days of any such change.

**21. Jurisdiction:** The Customer agrees that all dealings with C R Kennedy shall be deemed to be made in the State of Victoria, governed by Victorian law & agrees to submit to the jurisdiction of the appropriate Courts in or nearest Melbourne.

**22. Credit Limit:** If C R Kennedy grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time & it can vary or withdraw any credit facility at any time & without any liability to the Customer or any other party.

**23. Waiver:** If C R Kennedy elects not to exercise any of its rights arising as a result of any breach of these Terms or otherwise, it shall not constitute a waiver of any rights of C R Kennedy relating to any other rights or any subsequent or other breach.

**24. Notice:** The Customer agrees it will be deemed to have notice of any change to these Terms immediately they are adopted &/or published by C R Kennedy on its website, whether or not the Customer has actual notice. The Customer shall be bound by any terms & conditions of sale adopted by C R Kennedy immediately they are so adopted &/or published, despite any other purported or pre-existing terms & conditions.

**25. Security For Payment:** The Customer agrees upon request, to charge in favour of C R Kennedy (i) by way of a fixed charge all its books of account, financial records, goodwill, documents of title & current & later acquired real property & intellectual property & (ii) by way of a floating charge, the whole of the Customers other undertaking, property & assets, with payment of all monies owed to C R Kennedy.

**26. Forward Orders:** The Customer agrees a) to pay for so much of any forward order as is invoiced by C R Kennedy b) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

**27. Force Majeure:** C R Kennedy will not be in default or breach of any contract with the Customer by as a result of Force Majeure. Force Majeure means anything beyond the reasonable control of C R Kennedy & includes strikes & lock-outs

**28. Intellectual Property:** The Customer acknowledges & agrees a) C R Kennedy is the Australian distributor/agent for various lines of products which are listed on its website which shows relevant commercial details, including exclusive distributorships/agencies, years held & details of any exclusive licenses/rights in Australia (eg: to enjoy & exploit intellectual property rights relating to those products including patents, Trade Marks, copyright in all published & printed materials, designs, trade secrets & know-how etc) b) C R Kennedy has over many years invested substantial money, time & effort to promote & develop the market for its range of products in Australia & has created & enjoys a substantial goodwill in the product names, range of products & services in Australia ("C R Kennedy Investment") c) the Customer will not do or permit anything to be done, directly or indirectly to diminish in any way the C R Kennedy Investment, whether by act, omission, representation, misrepresentation, parallel importation of any products, passing-off or otherwise.

AGREEMENT TO GUARANTEE AND INDEMNIFY (10/09)

To: The Supplier

1. We Guarantee payment to you of all monies & performance of all obligations including any past, present & future indebtedness or obligation to you by the Customer arising from any past, present or future dealing with you & any GST applicable thereto.

2. We indemnify you against all loss or damage arising from any past, present or future dealing you have or have had with the Customer.

3. We Agree

- (a) to pay to a stake-holder nominated by you the amount you certify is payable, before being able to dispute whether that amount is payable;
(b) that this agreement shall remain effective notwithstanding any conduct or event (including any subsequent agreement to guarantee, &/or indemnify & any other charge or security taken or given or any Deed of Company Arrangement whether or not agreed to by you) which, but for this clause may have released or varied any obligation of the Customer or any of us;
(c) any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
(d) that we sign both in our personal capacity & as Trustee of every trust of which we are trustee;
(e) to notify you of any change in the Customer's structure, management or position, including (i) any sale or disposition of any part of the business of the Customer (ii) any change in director, shareholder, management, partnership or trusteeship (iii) any new charge, mortgage or security given to any party (iv) any involvement in any franchise business in any capacity, within 7 days of the date of any such change.

4. Charge: We charge in your favour all our estate & interest in any land & in any other assets whether tangible or intangible in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Customer.

5. Consideration: You to grant credit from time to time at your discretion to the Customer &/or to forbear from taking any legal action against the Customer or any of us, for one month from the date hereof.

6. Proper Law: We agree that this Agreement & any claim or dispute between the Supplier, the Customer or any of us shall be governed by the law applicable in Victoria & heard in the appropriate courts in or nearest Melbourne.

7. Several Guarantors: If more than one Guarantor is named or intended to sign as guarantor, we each agree to be bound & liable for the full amount owed to you, even if we are the only one to sign & whether or not any amount is extinguished or compromised in any way. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting our liability to you.

8. Credit Limit: Any credit limit you grant or apply to the Customer is at your discretion & will not limit our liability to you.

9. Privacy Act: You may make any enquiries you deem necessary to investigate our creditworthiness including enquiry with our bankers, any other credit provider or any credit reporting agency & including personal credit & consumer credit information, LandData property inquiries & name searches ("the sources"). We authorise the sources to disclose anything about us which is in their possession. We agree that you may disclose information you have about us to the sources.

10. Severability: Any part of anything herein shall be severable without affecting any other part hereof.

11. Acknowledgment of Current Debt: We acknowledge that the Customer is indebted to you in the sum noted below as at the date noted below but acknowledge & agree that this Agreement to Guarantee & Indemnify is unlimited.

12. Definitions: (a) "You" & "Your" means each of the parties listed below as the "Supplier" jointly & severally (b) "We" & "us" means each of the Guarantors jointly & severally & the joint & several successors & assigns of each (c) "Customer" means the party listed below as "the Customer" & any party or parties who acquire &/or conduct any part of the business of the Customer or have any beneficial interest therein until notice is given pursuant to clause 3(e) hereof.

13. Demand: We agree that our liability to you arises without any demand by you upon the Customer or any of us.

14. Stamp Duty: We agree to pay any stamp duty applicable to this Agreement or any charge created pursuant to clause 4.

15. Attornment: To give effect to the obligations arising herein we irrevocably appoint any solicitor of the Supplier as our attorney.

16. Read & Understood: We have each read & understood this document before signing it. (\* refer below).

THE PARTIES:

A. THE SUPPLIER: C R Kennedy & Company Pty Ltd (ACN 008 458 884) & each subsidiary, division, affiliate, associated company & related entities & any successors & assigns thereof.

B. THE CUSTOMER: & each subsidiary, division, affiliate, associated company & related entities & any permitted successors & assigns thereof.

C. CURRENT DEBT ACKNOWLEDGED: Existing Customers \$ as at .....
New Customers \$ Nil

D. THE GUARANTORS

1 .....of.....

Signature.....

Witness.....(print name).....

2 .....of.....

Signature.....

Witness.....(print name).....

3 .....of.....

Signature.....

Witness.....(print name).....

DATED:

\* IMPORTANT NOTICE: If you sign this Guarantee you may be required to pay someone else's debts. You should ensure that you read & understand its terms. If necessary, seek independent professional advice.