

CHIORINO AUSTRALIA
 (Rob Harvey Pty Ltd trading as)
PO BOX 278
ARCHERFIELD QLD 4108

CREDIT APPLICATION

PH: 07 3274 1900 FAX: 07 3274 1294 (ABN: 83 010 744 313)

Company Name ("the Applicant") _____ ABN _____

Trading Name or Business Name (if applicable) _____

Business Phone No _____ Fax No _____

Postal Address _____

Delivery Address _____

Are you a: Sole Trader Partnership Company Trust Company

Are premises: Owned Leased Rented For How Long _____

How long have you operated this business _____

Names of owners (in case of a Sole Trader and Partnership) or Name of Directors (in case of a company)

Full Name _____ Date of Birth _____ Home Phone No _____

Home Address _____

Full Name _____ Date of Birth _____ Home Phone No _____

Home Address _____

Credit References:

1. Name _____ Ph _____ Fax _____

2. Name _____ Ph _____ Fax _____

3. Name _____ Ph _____ Fax _____

Credit Limit Required \$ _____

Bank _____ Branch _____ Account No _____

1. The applicant hereby applies to Rob Harvey Pty Ltd trading as Chiorino Australia (hereinafter named Chiorino Australia) for a credit account.
2. Should this application be accepted by Chiorino Australia the applicant agrees that the credit account shall be subject to the terms of this application and the usual terms and conditions of trade, a copy of which is contained herein and which the applicant has read and understands.
3. Chiorino Australia hereby advises that, pursuant to s. 18E (8) of the Privacy Act 1988, information disclosed in this credit application may be disclosed to a credit reporting agency. Under section 18E (8) (c) of the Privacy Act 1988 Chiorino Australia is allowed to give a credit reporting agency personal information about your credit application. Information which may be given to an agency is covered by Section 18E (1) of the Act and includes; identity particulars (as permitted by the Privacy Commissioner's determination issued under Section 18E (3)); the fact that you have applied for credit and the amount, the fact that Chiorino Australia is a credit provider to you, payments that become overdue by more than sixty (60) days and for which collection action has commenced; advise that payments are no longer overdue; cheques drawn by you which have been dishonoured more than once; on specific circumstances, that in the opinion of Chiorino Australia, you have committed a serious credit infringement; that credit provided to you by Chiorino Australia has been paid or otherwise discharged. Pursuant to ss. 18 K (1) and 18 n (1) of the Privacy Act 1988 and paragraph 2.12 of the Credit Reporting Code of Conduct issued under s. 18A of that Act, you hereby agree to Chiorino Australia obtaining personal information from a credit reporting agency or a credit provider for the purpose of assessing this application for commercial credit (including information as to credit worthiness); and agree to that agency or provider providing that information to Chiorino Australia for that purpose. You further agree to the obtaining from, and provision by, such agency or provider further credit reports which may assist Chiorino Australia in recovering any sums outstanding under the terms of the commercial credit agreement to which this application may lead.

DATED this _____ day of _____ 20__

SIGNATURE OF AUTHORISED OFFICER OF APPLICANT _____

PRINT NAME OF AUTHORISED OFFICER _____

DEED OF GUARANTEE AND INDEMNITY

TO: Rob Harvey Pty Ltd trading as Chiorino Australia (hereinafter named Chiorino Australia)
Whereas in consideration of Chiorino Australia agreeing to supply to the person who is named as "the Applicant" on the credit application annexed hereto (hereinafter called the "customer") with goods and/or services from time to time, I/we the undersigned ("referred to as the guarantor") HEREBY JOINTLY AND SEVERALLY agree with Chiorino Australia as follows:

1. To guarantee and to be answerable to Chiorino Australia for the due payment by the customer of all monies now or from time to time hereafter owing to or unpaid to Chiorino Australia on any account or any matter whatsoever by the customer either directly or indirectly and either alone or jointly with any other person, firm and/or corporation, including but without limiting the generality of the foregoing, any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by Chiorino Australia in enforcing payment by the customer of any such monies.
2. This Guarantee shall constitute a continuing guarantee to Chiorino Australia for all monies which are now or may from time to time be owing or remain unpaid and shall not be affected by:
 - 2.1 any variation or novation of the agreement between Chiorino Australia and the customer extending credit to the customer or any other changes to the terms of such agreement, including any extension to the credit limit applied for by the customer and approved by Chiorino Australia from time to time (and whether or not such agreed credit limit is exceeded at any time without approval by Chiorino Australia);
 - 2.2 the winding-up of the customer or the entry by the customer into a Deed of Company Arrangement whereby any debt due and owing by the customer to Chiorino Australia is extinguished or otherwise not recoverable;
 - 2.3 any time or other indulgence granted by Chiorino Australia to the customer or by any arrangement entered into whereby Chiorino Australia's rights are in any way modified or abrogated and no notice of the granting of any time or indulgence or of the entering into any arrangement need be given to the guarantor;
 - 2.4 termination of the agreement between Chiorino Australia and the customer for the provision of credit on account of the customer failing to inform Chiorino Australia of any change in ownership of the customer's business, share holding or control in which event the guarantor agrees to guarantee all monies due and owing by any third party to Chiorino Australia as a result of the continuance of supply of goods and services to the customer or third party under the customer's account until notification of such change has been given to Chiorino Australia and a new written agreement for the provision of credit has been entered into with the third party (including a guarantee and indemnity in the same terms as set out herein);
 - 2.5 the payment by the customer of monies to Chiorino Australia which are rendered void pursuant to the laws relating to bankruptcy, liquidation or administration of companies and no release, settlement or discharge which may have been given or made on the faith of such payment shall affect Chiorino's right to recover such monies from the guarantor;
 - 2.6 any legal limitation, disability or incapacity of the customer or any other circumstances whatsoever and any monies may be recoverable from the guarantor as principal debtor.
3. The guarantor hereby indemnifies Chiorino Australia in respect of all amounts payable by the customer to Chiorino Australia on account of goods and /or services supplied by Chiorino Australia to the customer, and all costs and interest which the customer may be required to pay Chiorino Australia, and the indemnity hereby given is a separate covenant and shall not be affected by the appointment by the customer of an administrator under the provisions of the Corporations Law or any Deed of Company Arrangement entered into by the customer.
4. The guarantor shall be liable to Chiorino Australia for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceedings for recovery under this guarantee.
5. It is expressly declared that notwithstanding the fact that this Deed of Guarantee and Indemnity may be intended or expressed to be executed and given by more than one person, the same shall in fact be a valid and effectual guarantee binding against such person or persons as shall execute the same forthwith upon their execution thereto and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
6. The guarantor hereby charges all property, both equitable and legal, of the guarantor in respect of any monies that may hereinafter be owing to Chiorino Australia under this guarantee by the guarantor or otherwise and hereby authorise Chiorino Australia or its solicitors to execute any consent forms as its attorney for the purpose of registering a caveat over any real property owned by the guarantor at any time.
7. This guarantee and the construction and interpretation of it shall be governed by the laws of the State of Queensland in force for the time being and from time to time, and the parties to this Deed of Guarantee and Indemnity irrevocably submit unconditionally to the jurisdiction of the Courts of Brisbane in the State of Queensland in respect of all claims, proceedings and matters arising out of or in respect to this Deed of Guarantee and Indemnity.
8. In this guarantee, unless the context otherwise requires, the singular includes the plural and vice versa, any gender includes each of the other genders, and words importing persons include firms, unincorporated bodies and corporations.

SIGNED THIS _____ day of _____ 200__

Signature of Guarantor Signature of Witness.....

Print Full Name Print Full Name

Address Address

.....

Signature of Guarantor Signature of Witness.....

Print Full Name Print Full Name

Address Address

.....

NOTE: THE COMPANY SEAL MUST NOT APPEAR ON THIS FORM.

TERMS AND CONDITIONS OF TRADE

1. Interpretation

- 1.1 Unless otherwise inconsistent with the context the word "person" shall include a corporation:
- 1.2 "goods" shall include services
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.5 "customer" shall mean the person named as "the Applicant" on the credit application annexed hereto.

2. Offer and Acceptance

- 2.1 Any quotation made by Chiorino Australia is not an offer to sell or to provide goods. Chiorino Australia shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by Chiorino Australia within thirty (30) days of receipt by Chiorino Australia of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Chiorino Australia and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Insofar as goods or services supplied by Chiorino Australia are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited:
 - (a) in the case of goods to any one of the following as determined by Chiorino Australia:
 - (i) the refund of the price paid by the customer for the goods or the issue of a credit note for such amount; or
 - (ii) the replacement of the goods or the supply of equivalent goods; or
 - (iii) the repair of the goods; or
 - (iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
 - (v) the payment of the costs of having the goods repaired;
 - (b) in the case of services to any one of the following as determined by Chiorino Australia:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

3. Delivery

- 3.1 Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by Chiorino Australia in writing providing for liquidated damages for failure to deliver by the quoted date Chiorino Australia shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of Chiorino Australia for failure to deliver on or before the quoted date. The customer shall accept and pay for goods if and when tendered notwithstanding any failure by Chiorino Australia to deliver by the quoted date. Written advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.2 Chiorino Australia shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Chiorino Australia or any other party, strike or any other industrial action be it of Chiorino Australia or other party or any other cause whatsoever.
- 3.3 Chiorino Australia reserves the right to deliver by instalments. If delivery is made by instalments the customers shall not be entitled:
 - (a) to terminate or cancel the contract; or
 - (b) to any claim, loss or damage howsoever arising failure by Chiorino Australia to deliver any instalments on or before the quoted date.
- 3.4 It is agreed the Chiorino Australia shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of Chiorino Australia.
- 3.5 Any quotation containing a provision to supply goods "ex-stock" is subject to fulfilment of prior orders at the date of receipt of the customer's order.

4. Payment

- 4.1 Unless otherwise agreed in writing, payment terms are net cash thirty (30) days from the end of the month in which the goods are invoiced to the customer.
- 4.2 This term as to the payment shall be of the essence of the contract.

5. Title

- 5.1 Notwithstanding the delivery of the goods or part thereof, the goods remain the sole and absolute property of Chiorino Australia as full legal and equitable owner until such time as the customer shall have paid Chiorino Australia the full price together with the full price of any goods then the subject of any other contract with Chiorino Australia.
- 5.2 The customer acknowledges that he receives possession of and holds goods delivered by Chiorino Australia solely as bailee for Chiorino Australia until such time as the full price thereof is paid to Chiorino Australia together with the full price of any goods then the subject of any other contract with Chiorino Australia.
- 5.3 Until such time as the customer becomes the owner of the goods, he will;
 - (a) store them on the premises separately;
 - (b) ensure that the goods are kept in good and serviceable condition;
 - (c) secure the goods from risk, damage and theft; and
 - (d) keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature that of the customer.
- 5.4
 - (a) Until the goods are paid for in full, Chiorino Australia authorises the customer to sell the goods as its agent. However, the customer shall not represent to any third parties that it is acting in any way for Chiorino Australia. Chiorino Australia will not be bound by any contracts with third parties to which the customer is a party.
 - (b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Chiorino Australia. The customer shall account to Chiorino Australia from this fund for the full price of the goods.
 - (c) The customer is entitled to a period of credit, but if prior to the expiration of credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to Chiorino Australia for the price of the goods.
 - (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding-up application presented against it or has a receiver appointed, Chiorino Australia may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract, suspend or cancel this contract or require payment in cash before or on delivery or tender of goods notwithstanding the terms of payment previously specified, or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

- 5.5 If the customer does not pay for any goods on the due date then Chiorino Australia is hereby irrevocably authorised by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored) and use reasonable force to take possession of the goods with liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the customer whatsoever.
- 5.6 On retaking possession of the goods Chiorino Australia may elect to refund to the customer any part payment that may have been made and to credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6 **Risk**

Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been placed on the vehicle which is to effect delivery from Chiorino Australia's store or warehouse. The goods shall remain at the customer's risk at all times unless and until Chiorino Australia retakes possession of the goods pursuant to these terms and conditions.

7 **Claims and Returns**

- 7.1 Subject to clause 2.2 herein Chiorino Australia shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with Chiorino Australia or occasioned to the customer or any third party or to his or their property or interest and whether or not due to negligence of Chiorino Australia, its servants or agents.
- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within fourteen (14) days notify Chiorino Australia in writing of the same.
- 7.3 Chiorino Australia shall not be liable in any circumstances for any:
- (a) defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Chiorino Australia) or accident;
 - (b) any transport installation removal, labour or other costs;
 - (c) details in goods not manufactured by it but Chiorino Australia will endeavour to pass on to the customer the benefit of any claim made by Chiorino Australia and accepted by the customer and the benefit of any claim made by Chiorino Australia and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit the rights of the customer to proceed against Chiorino Australia pursuant to the Trade Practices Act; and
 - (d) technical advice or assistance given or rendered by it to the customer or not in connection with the manufacture construction or supply of goods for or to the customer.

8 **Force Majeure**

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Chiorino Australia, Chiorino Australia is unable to perform in whole or in part any obligation under this contract, Chiorino Australia shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.

9 **Default**

Upon the occurrence of default by the customer in compliance with the terms herein:

- 9.1 Chiorino Australia may at its discretion withhold further supplies of goods or cancel the contract, or vary the terms of this contract without prejudice to its rights hereunder PROVIDED HOWEVER that Chiorino Australia may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 9.2 The customer hereby authorises Chiorino Australia or its agent to review its books and records, including all bank statements and other bank records, to determine whether the customer is able to pay its debts as and when they fall due and the customer further irrevocable grants to Chiorino Australia a licence to enter upon the customer's premises for such purpose.
- 9.3 The customer shall pay to Chiorino Australia interest at the current bank overdraft rate on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
- 9.4 Without prejudice to any other right or remedy the customer shall indemnify Chiorino Australia against any costs, fees, charges and disbursements charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to Chiorino Australia on an indemnity basis and all such costs shall be recoverable as a liquidated debt and, at the option of Chiorino Australia may be recovered in the Small Debts Court.
- 9.5 The customer shall pay to Chiorino Australia a reasonable administration fee on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of the loss of Chiorino Australia in respect of such act of default, however such fee shall not preclude Chiorino Australia from claiming any higher amount from the customer for any loss occasioned by such act of default.

10 **Change Of Ownership**

The customer agrees to notify Chiorino Australia in writing of any change of ownership of the customer or its business, or of directorships in the case of a corporate customer, or of any other change whatsoever affecting this agreement within seven (7) days from the date of such change and indemnifies Chiorino Australia against any loss or damage incurred by it as a result of the customer's failure to notify Chiorino Australia of any change.

11 **Lien Charge**

- 11.1 The customer hereby acknowledges and agrees that Chiorino Australia has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal of the customer in respect of any monies that may hereinafter be owing to Chiorino Australia under this contract by the customer or otherwise and hereby authorise Chiorino Australia or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the customer at any time, or to register this charge over assets of the customer with the Australian Securities Commission.

12 **Jurisdiction**

- 12.1 This contract for the supply of the goods is deemed to have been entered into in the state of Queensland. Any legal action arising out of or in respect of the contract and/or the interpretation thereof shall be brought only in the Courts of Brisbane in the State of Queensland and the customer irrevocably submits itself to the jurisdiction of the Courts of Brisbane in the State of Queensland.
- 12.2 If the subject matter of any dispute arising hereunder is within the jurisdiction of the Queensland Building Tribunal then the customer hereby elects not to have such dispute determined in the Queensland Building Tribunal but instead to have such dispute heard and determined either in the Magistrates, District or Supreme Court according to the jurisdiction of each such court.