
Credit Account Application Form

BAYSET PTY LTD
ACN 066 428 877
ABN 27 066 428 877

Issue Date October 2012

**PLEASE RETURN ORIGINAL FORM TO:
PO BOX 1213, ARCHERFIELD BC, QLD 4108**

Head Office:
Unit 1, 76 Postle Street, Coopers Plains Qld 4108
Tel:(07) 3722 3700 Fax: (07) 3722 3711

The Customer hereby applies for a credit account and submits the following information

Section 1. Customer's Account Details

Account Name to be used:

Trading Name: Registered Business Number:.....

Are you: A Corporation Partnership Sole Trader Public Supplier Trust

Name: ACN: ABN:

Business Address:

Postal Address:

Phone Number:..... Facsimile: Mobile:.....

Email:.....

Contact re Account:.....

Phone Number:..... Facsimile: Mobile:.....

Email:.....

Delivery Address:

Contact:..... Phone Number:..... Mobile:.....

Email:..... Preferred Freight Company:

Section 2. Customer's Business Details

Nature of Business:

Date Commenced:.....

Paid Up Capital: \$..... Annual Sales: \$.....

Full Names and Residential Addresses of Sole Trader, Partners or Directors	Trust	Phone Number	D.O.B	Drivers Licence Number

Section 3. Customer's Credit Details

Bank Name:..... Branch:.....

Account Numbers:..... Credit Limit Required (monthly):.....

Trade References 1:..... Phone Number:.....

Trade References 2:..... Phone Number:.....

Trade References 3:..... Phone Number:.....

3.1 The Customer (“you”) agrees:

- 3.1.1 That Bayset Pty Ltd (“the Supplier”) is the Supplier for the purposes of this Agreement;
- 3.1.2 That the submission of this application does not automatically result in the granting of a credit account by the Supplier;
- 3.1.3 That you acknowledge that the supply of goods as credit shall not take effect until you have completed a Credit Application and it has been approved with a credit limit established for the accounts;
- 3.1.4 That you have received “Monthly Credit Account Terms and Conditions of Agreement” and agree to be bound by them;
- 3.1.5 That you are not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator. You do not intend to enter into any scheme or arrangement with creditors either formally through a court or otherwise. None of the directors, partners or sole trader has been a director of a Company which was placed in liquidation or has been declared bankrupt or has entered into an arrangement under the Bankruptcy Act 1966 (as amended);
- 3.1.6 You authorise the Supplier to obtain from a credit reporting agency details of your personal and commercial credit information if required by the Supplier for the purpose of assessing this application for credit;
- 3.1.7 You acknowledge and agree that information about transactions under these terms and conditions may be used by the Supplier or any subsidiary or related body corporate or related entity of the Supplier as those terms are defined in the Corporations Act 2001 for marketing purposes;
- 3.1.8 You are authorised to make this application.

Signatures of All Directors / Partners / Sole Trader / Authorised Representative

Name (BLOCK)	Position	Signature	Date
.....

Witness Name (BLOCK)	.....	Signature	Date
.....

Name (BLOCK)	Position	Signature	Date
.....

Witness Name (BLOCK)	.....	Signature	Date
.....

Name (BLOCK)	Position	Signature	Date
.....

Witness Name (BLOCK)	.....	Signature	Date
.....

OFFICE USE ONLY

Trade References 1:.....

Trade References 2:.....

Trade References 3:.....

Approved:..... Date:..... Territory:.....

Credit Limit:..... Price Level:..... Class:.....

To: The Customer and The Guarantor

Privacy Act 1988 (Cth) Statement and Authority

As an organisation providing credit facilities BAYSET PTY LTD ABN 27 066 428 877 ("the Supplier") is subject to certain legislative and regulatory requirements which necessitate it obtaining and holding detailed information which personally identifies you and/or contains information or an opinion about you ("personal information"). The Supplier abides by the National Privacy Principles established under the Privacy Amendment (Private Sector) Act 2001. A copy of the National Privacy Principles and our Privacy Policy is available by contacting the Supplier's office.

"I/We acknowledge that the information provided in this Credit Account Application ("Application") and accompanying Guarantee has been given to the Supplier for the purposes of its assessing the financial standing and credit worthiness of each of us and I/we:-

1. Authorise the Supplier to make any enquiries and obtain any information from bankers and business referees mentioned in this Application or from anybody else that the Supplier may reasonably consider necessary;
2. Have been informed by the Supplier in accordance with Section 18E(8)(c) of the Privacy Act 1988 that certain items of personal information about me/us (including an opinion) might be disclosed to credit reporting agencies;
3. In accordance with Sections 18H and/or 18K and/or 18L(4) of the Privacy Act 1988:-
 - 3.1 Agree to reports being given to the Supplier for the purpose of assessing this Application;
 - 3.2 Agree that the Supplier may use, for the purposes of assessing an Application for credit and any accompanying Guarantee, any information concerning my/our commercial activities or commercial credit worthiness obtained from a person or body carrying on any business involving the provision of information about the commercial credit worthiness of persons;
 - 3.3 Authorise the Supplier to exercise my/our rights of access to my/our credit information files and credit reports.3.1.6 You authorise the Supplier to obtain from a credit reporting agency details of your personal and commercial credit information if required by the Supplier for the purpose of assessing this application for credit;
4. Agree that the Supplier may disclose and/or receive from any credit providers and/or credit reporting agency whether or not named in this Application any report or record or information that may have any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:-
 - 4.1 The assessment of any Application by me/us for credit or commercial credit;
 - 4.2 To notify other credit providers of a default by me/us;
 - 4.3 To exchange information with other credit providers as to the status of my/our account when I am/we are in default with the Supplier or with another credit provider;
 - 4.4 To assess my/our credit worthiness or commercial credit worthiness at any time;
 - 4.5 To assess whether to accept me/us as a customer or to continue to supply credit to me/us.
5. Agree that the Supplier may disclose certain aspects of personal information to third parties for the purposes of debt recovery, commencement or continuance of proceedings brought under the terms and conditions of the Application and any accompanying Guarantee, data analysis or as outlined in the Supplier's Privacy Policy.

Monthly Credit Account Terms and Conditions of Agreement (cont.)

These are the terms and conditions upon which BAYSET PTY LTD ABN 27 066 428 877 may supply goods and services on credit to an accepted monthly credit account customer (“the Customer”):-

“I/We acknowledge that the information provided in this Credit Account Application (“Application”) and accompanying Guarantee has been given to the Supplier for the purposes of its assessing the financial standing and credit worthiness of each of us and I/we:-

1. INTERPRETATION

- 1.1 The headings used in this Agreement do not form part of these terms and conditions and are for convenience only.
- 1.2 Where the context admits or requires, words importing the singular shall include the plural, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations
- 1.3 These terms and conditions shall apply mutatis mutandis as between the Customer and any subsidiary or related entity of the Supplier as those terms are defined in the Corporations Act 2001 except where:-
 - 1.3.1. there is a written credit agreement between the parties; or
 - 1.3.2. the resulting agreement constitutes a breach of any legislation.

2. ACCOUNT TERMS

- 2.1. The Supplier may in its absolute discretion refuse the Customer credit facilities or suspend or discontinue the supply of goods and services to the Customer or to increase or vary the Customer’s credit limit at any time without any obligation to provide to the Customer or the Customer’s guarantors, a reason for such action.
- 2.2 All goods or services delivered to the Customer by the Supplier in any calendar month must be paid for in full by the Customer on or before the Supplier’s last trading day in the month following the month in which the goods or services were delivered or provided (“the Due Date”).
- 2.3 If the Customer fails to make full payment by the Due Date interest will be charged at a rate which is 8% per annum above the Commonwealth Bank of Australia’s Corporate Overdraft Reference Rate as published in the Australian Financial Review calculated on daily balances on monies owed by the Customer to the Supplier both before and (as a separate and independent obligation) after any judgment.
- 2.4. The Customer will pay the Supplier for any and all of the Supplier’s expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under these terms and conditions together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under these terms and conditions. Such costs, duties and other expenses as well as interest payable pursuant to clause 2.3 may be recovered as a liquidated debt.
- 2.5. Any payments received by the Supplier from the Customer shall be applied first to any costs, duty, commission or other expenses referred to in 2.4, then to interest and then to the remainder of monies outstanding.
- 2.6. The Customer shall not deduct any amount from the amount due on any Supplier invoice or statement. The Customer shall not make any claim on the Supplier if any amounts are outstanding from the Customer to the Supplier. The Customer is not entitled to set off any amounts against its outstanding debts to the Supplier.

3. GENERAL

- 3.1. Unless agreed to in writing by the Supplier, any variation of these terms and conditions, including any terms and conditions of the Customer’s order deviating from or inconsistent with these terms and conditions, is rejected by the Supplier.
- 3.2. The Supplier may vary these terms and conditions by a notice of variation in writing to the Customer. The Customer agrees that the purchase of any goods or services after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions by the Customer.
- 3.3. Should there be any variation to any of the information supplied by the Customer to the Supplier in the credit account application or in the structure or nature of the Customer’s business (such as a conversion to or from a Company or trust) the Customer shall notify the Supplier in writing within 7 days of such variation.
- 3.4. These terms and conditions and all obligations hereunder shall be binding on the Customer’s personal representatives, successors and permitted assigns and shall be for the benefit of the Supplier’s successors and assigns.
- 3.5. Where the Customer is comprised of the names of two or more persons then each person is jointly and severally liable to pay all monies owed by the Customer to the Supplier.
- 3.6. Where there is any inconsistency between these terms and conditions (including any updated versions of these terms and conditions) and any subsequent agreement with the Customer for the supply of goods or services by the Supplier, then such subsequent agreement shall only prevail to the extent that it is inconsistent with these terms and conditions (including any updated versions of these terms and conditions).
- 3.7. The waiver of any of these terms and conditions by the Supplier shall not be construed as a continuing waiver of that term or condition and the Supplier shall be entitled to require compliance with all of these terms and conditions at any time.
- 3.8. If any provisions of these terms and conditions are inconsistent with the Personal Property Securities Act 2009 (‘PPSA’), the PPSA shall prevail to the extent of that inconsistency.

Monthly Credit Account Terms and Conditions of Agreement (cont.)

4. EVIDENCE OF MONIES PAYABLE

A statement in writing signed by any director, secretary, administration manager or credit manager of the Supplier stating the balance of the monies due to the Supplier by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at the date of that statement.

5. CREDIT LIMIT

- 5.1. Any credit limit is solely for the benefit of the Supplier.
- 5.2. The obligations of the Customer under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

6. DEFAULT

If there is any default by the Customer in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Customer or the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these terms and conditions then:-

- 6.1. All monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired;
- 6.2. The Supplier may terminate this Agreement forthwith.

7. RETENTION OF TITLE

- 7.1. The goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises;
- 7.2. Property and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer have been paid for in full and until then:-
 - 7.2.1. The Customer will hold the goods as a fiduciary and bailee for the Supplier;
 - 7.2.2. The goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and Supplier will be owners in common of the new product;
 - 7.2.3. The Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
 - 7.2.4. The Customer shall not deal with the money of the supplier in any way which may be adverse to the Supplier;
 - 7.2.5. The Customers shall not charge the goods in any way nor grant or otherwise give any interest in the goods while they remain the property of the Supplier
 - 7.2.6. The Supplier may require the Customer to return the goods to it on demand. If the Customer fails to return the goods to the Supplier or the Supplier's agent may (as the warrantee of the client) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the goods are situated to inspect or repossess the goods;
 - 7.2.7. The Supplier shall have the right of stopping the goods in transit whether or not delivery has been made.
- 7.3. Despite clause 7.2 the Supplier will be entitled to issue proceedings to recover the price of the goods sold notwithstanding that the ownership of the goods may not have passed to the Customer;
- 7.4. The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer which ever occurs first and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the goods or fails to supply the details of its insurance policy the Customer will reimburse the Supplier for the costs of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

8. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- 8.1. In this clause:-
 - 8.1.1. A Financing Statement has meaning given to it by the PPSA;
 - 8.1.2. Financing Change Statement has the meaning given to it by the PPSA;
 - 8.1.3. Security Agreement means the Security Agreement under the PPSA created between the Customer and the Supplier by these terms and conditions; and
 - 8.1.4. Security interest has the meaning given to it by the PPSA.
- 8.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:-

Monthly Credit Account Terms and Conditions of Agreement (cont.)

- 8.2.1. Constitute a Security Agreement for the purposes of the PPSA;
- 8.2.2. Create a security interest in:-
 - (a) All goods previously supplied by the Supplier to the Customer (if any);
 - (b) All goods that will be supplied in the future by the Supplier to the Customer;
- 8.3 The Customer undertakes to:-
 - 8.3.1. Promptly sign any future documents and/or provide any further information (such information is to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to:-
 - (a) Register a Financing Statement or Financing Change Statement in relation to a security interest of the Personal Property Securities Register;
 - (b) Register any other documents required to be registered by the PPSA; or
 - (c) Correct a defect in the Statement referred to in clause 8.3.1 (a) or 8.3.1 (b).
 - 8.3.2 Indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Change Statement on the Personal Property Security Register established by the PPSA or releasing any goods charges;
 - 8.3.3 Not register a Financing Change Statement in respect of security interest without the prior written consent of the Supplier;
 - 8.3.4 Not register or permit to be registered a Financing Statement or a Financing Change Statement in relation to the goods in favour of a third party without the prior written consent of the Supplier; and
 - 8.3.5 Immediately advise the Supplier of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales;
- 8.4 The Supplier and the customer agree that section 96, 115 and 125 of the PPSA do not apply to the Security Agreement created by these terms and conditions.
- 8.5 The Customer hereby waives its right to receive notices under Sections 95, 118 121(4), 130, 132(3)(d) and 132(4) of the PPSA;
- 8.6 The Customer waives its rights as a Grantor and/or Debtor under Sections 142 and 143 of the PPSA;
- 8.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a Verification Statement in accordance with Section 157 of the PPSA;
- 8.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 8.3 and 8.5.

9. CONSUMER ACT 2010 (CCA) AND FAIR TRADING ACTS (FTA)

- 9.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 9.2 Where the Customer buys Goods and/or Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

10. SEVERANCE

In the event that the whole or any part or parts of any clause in this Agreement is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.

11. JURISDICTION

- 11.1 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Queensland. The parties submit to the exclusive jurisdiction of the Courts in Brisbane;
- 11.2 The parties agree that proceedings may be commenced in any court in Brisbane and consent to that Court having jurisdiction by virtue of this clause notwithstanding that the Court would not have such jurisdiction with this consent;

12. NOTICE

Notice required to be given by the Customer to the Supplier pursuant to these terms and conditions may be delivered personally or sent by post to the Credit Manager of the Supplier at the Supplier's postal address at PO Box 1213, Archerfield BC QLD 4108 and unless the contrary is proved shall be taken as delivered when received by the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally or sent by post to the Customer's last known address and shall be taken as delivered on the second business day following posting.

- 12.1 The Supplier's invoices and statements are deemed to be received by the Customer on the second business day after posting by ordinary pre-paid post.

13. CHARGING CLAUSE

- 13.1 To secure payment of all monies which are or may become payable by the Customer to the Supplier under this Agreement the Customer (or where the Customer is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those monies all of the Customer's interest in real property wherever located both present and future and the Customer consents to the Supplier lodging a caveat or caveats over such property to protect its interest.
- 13.2 Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Customer's indebtedness to the Supplier.
- 13.3 Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Customer's lawful attorney to execute any such mortgage or other instrument.

14. GST

- 14.1 In this clause the expressions "GST", "input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the "A New Tax System (Goods and Services Tax) Act 1999.
- 14.2 With the exception of any amount payable under this clause 12, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- 14.3 If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice.

15. TRUST AND TRUSTEES

Where the Customer is a trustee:-

- 15.1 The Customer agrees to produce a stamped copy of the trust deed (including all amendments) with this Agreement and also at any time in the future when requested by the Supplier in writing.
- 15.2 The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by the terms of this Agreement both personally and as trustee.

16. CLIENT SPECIFICATION/SPECIAL ORDERS/INTELLECTUAL PROPERTY

If any goods are manufactured by the Supplier to the design or specification of the Customer, the Customer warrants to the Supplier that any drawings, plans, specifications and other design information provided to the Supplier 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.

17. FORCE MAJEURE

The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under this Agreement if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the Supplier shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

18. QUOTATION

Where the Supplier quotes for supply of goods or services to the Customer, the quotation is open for acceptance for 30 days unless a different period is stated in the quotation.

19. ADDITIONAL CHARGES

The following are not included in the price of goods and services of the Supplier and are payable by the Customer:-

- 19.1 Delivery and insurance charges;
- 19.2 Any sales, goods and services or consumption taxes, stamp duty and any other taxes, fees or other government levies or charges which may be imposed with respect to this Agreement, or the goods or services but excluding any income tax payable by the Supplier on its own income.

20. DELIVERY

- 20.1 Delivery of goods to the Customer occurs when they are dispatched from the Supplier's premises.

Monthly Credit Account Terms and Conditions of Agreement (cont.)

- 20.2 Delivery dates are estimates only. The Supplier will notify the Customer when goods are available for delivery. The goods will be dispatched to an address or addresses nominated by the Customer. If requested by the Customer the Supplier will arrange on behalf of the Customer for goods to be sent to the Customer at another address. If the Customer is not present at the specified address for delivery then the Supplier may unload the goods at that address and the goods shall be deemed to be received by the Customer and the Supplier shall not be liable for any claims, costs or losses suffered by the Customer.
- 20.3 Delivery may be made by instalments. Each instalment will be treated as a separate delivery with the price being apportioned in accordance with the proportion of goods delivered.

21. ACCEPTANCE

- 21.1 The Customer must within 2 working days after delivery inspect the goods and give the Supplier written notice of damage, shortages or anything else not in accordance with this Agreement.
- 21.2 The Customer agrees to keep goods referred to in a notice given under this clause (and in the case of shortages the remainder of the goods delivered) in the condition in which they were delivered until the Supplier has inspected them. The Supplier agrees to inspect the goods as soon as reasonably practicable after receipt of the notice.
- 21.3 Goods are taken to be as ordered if:-
- 21.3.1 The Customer does not give the notice referred to in this clause; or
- 21.3.2 The goods referred to in a notice are used or damaged after delivery.
- 21.4 If the Supplier delivers less than the full quantity of goods the Customer may not reject those goods delivered;
- 21.5 If the Supplier delivers extra or different goods the Customer may reject only the extra or different goods.

22. CANCELLATION

- 22.1 The Supplier is not bound to accept cancellation of an order nor the return of goods from the Customer except by prior arrangement. If such an arrangement has been made then:-
- 22.1.1 The goods must be returned within 14 days of delivery;
- 22.1.2 A restocking fee may be charged by the Supplier to the Customer. The fee will be calculated with reference to the cost to the Supplier;
- 22.1.3 Outward and inward freight and transport charges are the responsibility of the Customer. If not prepaid by the Customer they will be deducted from any credit.
- 22.2 The following goods cannot be returned to the Supplier by the Customer for credit:-
- 22.2.1 Goods are specifically made, modified or imported for the Customer;
- 22.2.2 Goods altered or damaged by the Customer.

23. LIABILITY OF THE SUPPLIER

- 23.1 If under any law, any terms which apply to the supply of goods or services under this Agreement cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- 23.2 All terms which would otherwise be implied are excluded except as stated in this Agreement.
- 23.3 To the extent permitted by law the Supplier's sole liability for any breach of any term is limited:-
- 23.3.1 In the case of goods supplied by the Supplier, to any one of the following as determined by the Supplier :-
- (a) The replacement of the goods or supply of equivalent goods;
- (b) The repair of the goods;
- (c) The payment of the cost of replacing the goods or acquiring equivalent goods;
- (d) The payment of the cost of having the goods repaired;
- 23.3.2 In the case of services supplied by the Supplier, to any one of the following:-
- (a) The supplying of the services again;
- (b) The payment of the cost of having the services supplied again.
- 23.4 The Customer does not rely on any representation, warranty or other term made by or on behalf of the Supplier which is not set out in this Agreement;
- 23.5 The Supplier is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:-
- 23.5.1 Arising out of a breach of an implied or expressed term; or
- 23.5.2 Suffered as a result of the negligence of the Supplier or its employees or agents, apart from liability as set out in clause 2.1;
- 23.6 The Customer acknowledges and agrees that:-
- 23.6.1 The Customer has read and understood the Privacy Act 1988 (Cth) Statement and Authority which is attached to these terms and conditions;

Monthly Credit Account Terms and Conditions of Agreement (cont.)

23.6.2 The Privacy Act 1988 (Cth) Statement and Authority is incorporated into and forms part of these terms and conditions;

2.6.3 For the purpose of assessing whether to accept the Customer for credit that the Supplier may obtain from a credit reporting agency a credit report containing personal information about the Customer.

I/We hereby acknowledge affirm and agree that I/We have read these terms and conditions and fully understand and comprehend same and certify that the information supplied as the basis of the Supplier's decision to grant credit is true and correct.

SIGNED

**by
in the presence of:**

Full Name:
(if a Company, Director's name)

Street Address:

Signature: **Date:**
(if a Company, Director's name)

SIGNED

**by
in the presence of:**

Full Name:
(if a Company, Director's name)

Street Address:

Signature: **Date:**
(if a Company, Director's name)

SIGNED

**by
in the presence of:**

Full Name:
(if a Company, Director's name)

Street Address:

Signature: **Date:**
(if a Company, Director's name)

Guarantee and Indemnity (cont.)

TO: BAYSET PTY LTD ABN 27 066 428 877

IN CONSIDERATION of BAYSET PTY LTD ABN 27 066 428 877 (“the Supplier”) agreeing to supply (either now or at some future time) or to continue to supply or to cause to be supplied at the Supplier’s cost to the Customer (being the Customer identified in the accompanying Credit Account Application) goods and services on credit the person identified below as guarantor (“the Guarantor”) HEREBY GUARANTEES the due payment by the Customer of all moneys now due and owing or which become due and owing by the Customer on any account whatsoever (including on account of goods sold and services supplied and work done) to the Supplier AND the Guarantor agrees:

- 1 That in this Guarantee, unless a contrary intention appears from the context, persons is defined to include but not limited to a company, trust, partnership or incorporated association and the singular number shall include the plural and vice versa.
- 2 That this Guarantee:
 - (a) Will be a continuing Guarantee;
 - (b) Will be irrevocable irrespective of any amount or amounts which may be paid to the Supplier by or on behalf of or for the credit of the Customer at any time during the continuance of any credit which may be given by the Supplier to the Customer;
 - (c) Shall not be determined or affected by the death, bankruptcy, liquidation, official management, administration, control or receivership (as the case may be) of the Customer;
 - (d) Shall remain in full force and effect until all moneys owing to the Supplier from time to time by the Customer have been paid or satisfied and this Guarantee has been discharged in writing by the Supplier;
 - (e) Shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligation however created and in particular shall be independent of any other security which the Supplier may hold now or in the future in respect of the moneys intended to be secured by this Guarantee to the effect that this Guarantee shall be enforceable without first having recourse to any such security and without taking any steps or proceedings against the Customer regardless of whether any other security shall be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supplier of any other security through acts or omissions on the Supplier’s part;
 - (f) Shall be governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the Courts in Brisbane for any claim or matter arising under this Guarantee.
- 3 The Guarantor will not, while any moneys are owing to the Supplier by the Customer, claim or receive the benefit of any dividend or payment in a winding up/bankruptcy of the Customer and will not prove or claim in a winding up/bankruptcy of the Customer nor in any arrangement relating to the Customer in competition with the Supplier so as to diminish any dividend or payment which but for such proof or claim the Supplier would be entitled to receive and that the receipt of any payment by the Supplier out of a winding up/bankruptcy of the Customer or any arrangement relating to the Customer shall not affect the Supplier’s right to recover from the Guarantor under this Guarantee.
- 4 Any settlement, discharge or release between the Guarantor and the Supplier will be conditional upon no security or payment to the Supplier by the Customer or any other person being voided or reduced by virtue of any provisions or enactments relating to insolvency or bankruptcy, and the Supplier may recover the value or amount of any such security or payment so voided or reduced from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
- 5 That the liability of the Guarantor under this Guarantee will not be impaired or discharged:-
 - (a) By any reason of any time or other indulgence granted by the Supplier to the Customer or by any arrangement entered into whereby the Supplier’s rights are in any way modified or abrogated and that no notice of the granting of any time or indulgence or of the entering into of any arrangement need be given to the Guarantor;
 - (b) If any amounts owed by the Customer may be unrecoverable (temporarily or permanently) for any reason at all;
 - (c) If any change in the status or structure of the Customer occurs;
 - (d) By any release or compromise with the Customer or any one or more Guarantors by operation of law or otherwise;
 - (e) By the omission of any name or address of any Guarantor.
- 6 That the liability of the Guarantors (if more than one):
 - (a) Is joint and several and every reference to the Guarantor in this Guarantee will bind each of those persons;
 - (b) Will be effective even if any of the intended co-Guarantors have not executed the Guarantee or that the Guarantee has been held to be ineffective or unenforceable against one or more of the Guarantors.
- 7 A statement in writing signed by any Director, Secretary, Administration Manager or Credit Manager of the Supplier stating the balance of the moneys due to the Supplier by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at the date of that statement.
- 8 The Supplier will be at liberty at any time in the Supplier’s absolute discretion and without giving any notice to the Guarantor to refuse or limit further credit or supplies of goods or services to the Customer without affecting in any way the liability of the Guarantor.
- 9 The Guarantor:

Guarantee and Indemnity (cont.)

- (a) Will pay interest on the moneys secured by this Guarantee at the same rate as the Customer is required to pay interest pursuant to the terms and conditions of agreement at a rate which is 8% per annum above the Commonwealth Bank of Australia's Corporate Overdraft Reference Rate as published in the Australian Financial Review calculated on daily balances on monies owed by the Customer to the Supplier both before and (as a separate, independent obligation) after any Judgment;
 - (b) Will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under this Guarantee together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under this Guarantee. Such costs, duties and other expenses as well as interest payable pursuant to clause 9.1 may be recovered as a liquidated debt.
 - (c) Has made independent investigations and enquires and has not entered into this Guarantee nor executed this instrument as a result or by reason of any promise, information, representation or statement of any kind whatsoever given by or on behalf of the Supplier.
- 10 This Guarantee and the Supplier's rights under it may be absolutely assigned or transferred by way of security by the Supplier without the consent of the Customer or the Guarantor.
- 11 Subject to the terms of this Guarantee, the Monthly Credit Account Terms and Conditions of Agreement and this Guarantee constitutes the sole and entire Agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement has no force or effect.
- 12 In the event that the whole or any part or parts of any clause in this Guarantee is judged to be unenforceable by a court of competent jurisdiction then such clause or part thereof shall be to that extent severed from this Guarantee without effect to the validity and enforceability of the remainder of these clauses.
- 13 To secure payment of all moneys which are or may become payable by the Guarantor to the Supplier under this Guarantee the Guarantor hereby charges with the due payment of all of those moneys all of the Guarantor's interests in real property wherever located both present and future and the Guarantor consents to the Supplier lodging a caveat or caveats to protect its interests.
 - (a) Upon demand by the Supplier, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Guarantor's indebtedness to the Supplier.
 - (b) Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the Credit Manager or a duly authorised officer of the Supplier to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.
- 14 If the whole or any part of the monies hereby secured are or may be irrecoverable from the Customer by the Supplier for any reason whatever whereby the amount thereof or resulting there from is not recoverable from the Guarantor as a surety, then and in each such case:-
 - (a) The Guarantor as a separate and additional liability under this Guarantee indemnifies the Supplier in respect of the monies secured by this Guarantee;
 - (b) The Guarantor as a principal debtor agrees to pay to the Supplier when demanded in writing a sum equal to the amount of the monies secured by this Guarantee; and
 - (c) For the purposes of this indemnity, this clause shall be construed as if the monies secured by this Guarantee were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.
- 15 Where the guarantor is a trustee:-
 - (a) The Guarantor agrees to produce a stamped copy of the Trust Deed (including all amendments) at any time in the future when requested by the Supplier in writing;
 - (b) The Guarantor warrants that it has full power and authority to enter into this Guarantee on behalf of the trust and that it shall be bound by the terms of this Guarantee both personally and as Trustee.
- 16 In further consideration of the Supplier agreeing to supply or continue to supply at the Supplier's cost to the Customer goods and services on credit, the Guarantor hereby guarantees the due payment by the Customer of all monies now due and owing or which become due and owing by the Customer on any account whatsoever to any subsidiary or any related entity (as those terms are defined in the Corporations Act 2001) of the Supplier ("the Extended Supplier").
- 17 The provisions of this Guarantee shall apply mutatis mutandis as between the Guarantor and the Extended Supplier except where:-
 - (a) There is a separate guarantee between the parties; or
 - (b) The resulting guarantee constitutes a breach of any legislation.
- 18 Each Guarantor (if there is more than one) acknowledges and agrees that:-
 - (a) The Guarantor has read and understood the Privacy Act 1988 (Cth) Statement and Authority which is attached to this Guarantee;
 - (b) The Privacy Act 1988 (Cth) Statement and Authority is incorporated into and forms part of this Guarantee;
 - (c) For the purpose of assessing whether to accept the Guarantor for credit provided to the Customer that the Supplier may obtain from a credit reporting agency a credit report containing personal information about each Guarantor.

Guarantee and Indemnity (cont.)

Executed as a deed by the Guarantor:

Dated this day of 20.....

SIGNATURE OF GUARANTOR TO BE WITNESSED BY AN ADULT PERSON:

SIGNED (1)
by
in the presence of:

..... Signature of Witness	..... Signature of Guarantor
..... Name of Witness (BLOCK LETTERS)	..... Name of Guarantor (BLOCK LETTERS)
.....
.....
..... Address of Witness	..... Address of Guarantor

SIGNED (2)
by
in the presence of:

..... Signature of Witness	..... Signature of Guarantor
..... Name of Witness (BLOCK LETTERS)	..... Name of Guarantor (BLOCK LETTERS)
.....
.....
..... Address of Witness	..... Address of Guarantor

SIGNED (3)
by
in the presence of:

..... Signature of Witness	..... Signature of Guarantor
..... Name of Witness (BLOCK LETTERS)	..... Name of Guarantor (BLOCK LETTERS)
.....
.....
..... Address of Witness	..... Address of Guarantor