



## Application for Commercial Credit

SMC Pneumatics (Australia) Pty Ltd  
A.B.N. 64 000 543 519

SMC Manufacturing (Australia) Pty Ltd  
A.B.N. 49 003 250 413

SMC Pneumatics (Australia) Pty Ltd | SMC Manufacturing (Australia) Pty Ltd  
[www.smcaus.com.au](http://www.smcaus.com.au) | [www.smcmanufacturing.com](http://www.smcmanufacturing.com)  
[accounts@smcaus.com.au](mailto:accounts@smcaus.com.au)

For contact details please see overleaf:



| Sydney

| Melbourne

| Adelaide

| Perth

| Brisbane

| Townsville

# Application for Commercial Credit

## Contacts

### SMC Pneumatics (Australia) Pty Ltd

Customer Service: 1800 Pneumatics (1800 763 862)

**Sydney**  
(Head Office)  
14-18 Hudson Avenue  
Castle Hill NSW 2154  
T (02) 9354 8222  
F (02) 9354 8253  
E [nswsales@smcaus.com.au](mailto:nswsales@smcaus.com.au)

**Melbourne**  
25 Business Park Drive  
Monash Business Park  
Notting Hill VIC 3168  
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E [vicsales@smcaus.com.au](mailto:vicsales@smcaus.com.au)

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54-56 Ormond Street  
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T (08) 8245 7200  
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E [sasales@smcaus.com.au](mailto:sasales@smcaus.com.au)

**Perth**  
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E [wasaales@smcaus.com.au](mailto:wasaales@smcaus.com.au)

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T (07) 3623 5300  
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**Townsville**  
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Bohle Townsville QLD 4818  
T (07) 4774 9400  
F (07) 4774 9401  
E [smctownsville@smcaus.com.au](mailto:smctownsville@smcaus.com.au)

### SMC Manufacturing (Australia) Pty Ltd

**Sydney**  
14 Hudson Ave  
Castle Hill NSW 2154  
P: (02) 9354 8222  
F: (02) 9354 8259  
E: [info@smcman.com](mailto:info@smcman.com)



Head Office  
 14-18 Hudson Avenue  
 CASTLE HILL NSW 2154  
 Tel: (02) 9354 8222  
 Fax: (02) 9354 8251



**APPLICATION FOR COMMERCIAL CREDIT**

Application referring to (please tick)	<input type="checkbox"/> SMC Pneumatics (Australia) Pty Ltd	<input type="checkbox"/> SMC Manufacturing (Australia) Pty Ltd Trading as "Precision Sheetmetal"
Applicant business is a (please tick)	<input type="checkbox"/> Company	<input type="checkbox"/> Partnership
	<input type="checkbox"/> Sole trader	<input type="checkbox"/> Trading Trust

**Applicant**

Business/company name (legal entity)			
Trading name (if applicable)			
ACN		ABN	
Business street address			
Business postal address			

**Contact details**

Purchasing contact person		Accounts payable contact person	
Tel		Tel	
Email		Email	
Fax		Fax	
Preferred document delivery: <i>please circle.</i>	Fax / Email	Preferred document delivery: <i>please circle.</i>	Fax / Email

**Details of sole trader/partners**

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

**Business history**

Date business commenced		Anticipated purchases
Nature of business		Expected monthly purchases
		Ultimate parent company
If you are trading or have previously traded with SMC – entity name (& account number if known)		

**Trade references** (Trade/material supply only – no professional services, freight, hire or rental etc.)

Business Name 1		Telephone	
Credit limit & Payment terms		Fax	
Business Name 2		Telephone	
Credit limit & Payment terms		Fax	
Business Name 3		Telephone	
Credit limit & Payment terms		Fax	

# TERMS AND CONDITIONS

## Formation of Contract

1. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it from the Applicant.
2. Quotations provided by the Supplier are valid for a period of 30 days unless otherwise specified. Prices agreed between the Supplier and the Applicant in respect of an order will be fixed from the date of acceptance of the order, provided the Supplier is permitted to manufacture the Goods on its own normal production schedule and ship immediately on completion, and subject to any rise and fall provisions specified within the quotation.
3. Placement of an order, either verbally or in writing, will constitute acceptance of the Supplier's quotation and of these Terms and Conditions.
4. Orders for Goods must be submitted in the form required by the Supplier.
5. These Terms and Conditions apply to, and are incorporated into any quote or order between the Applicant and the Supplier, to the exclusion of the Applicant's terms and conditions of purchase or any other document.

## Delivery and Force Majeure

6. The Supplier is deemed to have delivered the Goods when they are made available for unloading at the delivery location specified in an order.
7. Unless otherwise agreed in an order, the Goods will be transported at the Applicant's cost and risk.
8. Shipping dates are approximate only. The Supplier will not be liable for delay in performance of its obligations under these Terms and Conditions resulting from or contributed by circumstances beyond the Supplier's control and/or without limitation from or by acts of God and other, fire, explosion, flood, accident to plant or equipment, riots, terrorism, wars or national emergency, labour disputes of every kind, however caused, acts of government, inability to obtain suitable material or equipment, acts of carriers or postal authorities.
9. The Applicant may not cancel an order for Goods because of any such delay or for any other reason not the fault of the Supplier.
10. Partial shipments may be made and invoiced on completion of manufacture.
11. If delivery is delayed at the request of the Applicant, the Supplier may invoice Goods in accordance with any previously agreed delivery schedule or otherwise when it is prepared to make the shipment.
12. Where delivery is delayed at the request of the Applicant, the Supplier may at its discretion, charge storage fees at a rate of \$50 per week or 0.15% of invoice value, whichever is the greater. The Goods will be stored at the Applicant's risk.

## Risk in Goods

13. Where Goods are sent carriage forward, all responsibility on the Supplier's part ceases when the goods leave the Suppliers works. Where Goods are sent carriage paid, the Supplier will repair or replace free of charge goods damaged in transit, provided that the carriers and the Supplier receive written notification of such damage within three days of delivery, but not otherwise, and provided that in case of loss or damage in transit the Supplier's responsibility under this clause is limited to that which the Supplier is able to enforce upon the railway company and/or other carriers.

## Claims and Returns

14. Goods which are damaged before delivery, incorrectly sent or short delivered must be notified in writing to the Supplier within 48 hours of delivery.
15. The Applicant will not return any Goods to the Supplier without obtaining prior authorisation from the Supplier. No returns will be accepted unless a copy of the purchase invoice is enclosed. Only damaged or incorrect Goods notified as required and authorised by the Supplier may be returned to the Supplier within 14 days of delivery.
16. The Supplier will not accept returns of Goods which have been manufactured at the Applicant's request, or procured as a special order from overseas.
17. In the event of an incorrect selection of Goods, Goods must be returned "unused" and in fully resalable condition (original packaging) within 14 days of purchase, at the Applicant's cost. Returns will be subject to a restocking fee of 20% of the invoiced price for those Goods.
18. The Applicant bears the freight costs for Goods returned to the Supplier. The Supplier has absolute discretion as to whether to accept the return of Goods for any other reason.

## Retention of Title

19. Property in the Goods supplied by the Supplier to the Applicant does not pass to the Applicant until the money owing for those Goods, and any other money owing by the Applicant to the Supplier, has been paid in full.
20. Until the Goods have been paid for in full:
  - (a) the Applicant must hold the goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the Goods with other similar goods;
  - (b) the Applicant must not either sell the Goods or use the Goods in a manufacturing or construction process, other than in the ordinary course of its business, in which case the Applicant grants to the Supplier a *security interest* in either every payment to the Applicant for the Goods or the portion of every payment for the manufactured product that relates to the Goods (both as *proceeds* of the Goods and as original *collateral*); and
  - (c) the Applicant must not sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Applicant as a result of the use, manufacture or resale of the Goods.

21. The Applicant irrevocably authorises the Supplier at any time, to enter any premises upon which the Goods are stored to enable the Supplier to inspect the Goods and, if the Applicant has breached these Terms and Conditions or suffers an Insolvency Event (as defined in clause 69(c)(iii)), to reclaim possession of the Goods. The Applicant indemnifies the Supplier against any liability to any person in connection with such entry or reclamation.
22. The Applicant acknowledges and agrees that:
  - (a) this clause creates a *security interest* in all present and after acquired Goods and any *proceeds* as security for the Applicant's obligations to the Supplier;
  - (b) the Supplier is a *secured party* in relation to the Goods and any *proceeds* of the Goods, and is entitled to register its interest on the *register* as a *security interest*, and if applicable, a *purchase money security interest*;
  - (c) the Supplier may, by notice to the Applicant, require the Applicant to take all steps requested by the Supplier to ensure its *security interest* in the Goods and the *proceeds* is enforceable, and to perfect, or better secure the position of the Supplier and the Applicant must comply with that notice;
  - (d) the Supplier is not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded; and
  - (e) it will provide 14 days prior written notice of any changes to the Applicant's name, address, or other contact details required on the *register*.
23. A term used in italics in clauses 19- 23 has the same meaning as in the PPSA.
24. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clauses 19 - 23.
25. The Applicant agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Applicant on those Goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.

## Suspension or Cessation of Supply

26. The Supplier may in its complete discretion and without incurring any liability to the Applicant, cease or suspend the supply of Goods to the Applicant.
27. Without limiting clause 26, if an Event of Default occurs, the Supplier may, without prejudice to its other rights and to the extent permitted by law, call up moneys owed to it by the Applicant, retain all moneys paid on account, or cease further deliveries and recover from the Applicant all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Goods for which payment remains outstanding.
28. In the event delivery of Goods is delayed due to the withdrawal of credit, the Supplier will not be liable for any damage resulting directly or indirectly from such action.

## Indemnity

29. The Applicant indemnifies the Supplier and will keep the Supplier indemnified against:
  - (a) all losses incurred by the Supplier;
  - (b) all liabilities incurred by the Supplier; and
  - (c) all costs actually payable by the Supplier to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Supplier in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, our of court settlement or appeal); arising directly or indirectly as a result of or in connection with:
    - (d) the supply of Goods by the Supplier to the Applicant; and
    - (e) the carrying out of any work by the Supplier on the Applicants' or any other person's property;unless caused by the wilful misconduct of the Supplier or any of its employees or agents acting within the scope of their employment.

## Payment terms

30. The terms of payment are strictly thirty (30) days (or such other period agreed in writing by the Supplier) from the date of invoice and payment is due and payable on that date.
31. Time is of the essence in respect of the Applicant's obligation to make payments for Goods sold by the Supplier to the Applicant.
32. If the Applicant defaults in making payment to the Supplier in accordance with these Terms and Conditions, the Supplier may in its absolute discretion:
  - (a) charge the Applicant interest calculated on the portion of the Applicant's account overdue at the rate of 2% per month from the date on which the default arose; and
  - (b) require the Applicant to reimburse the Supplier for all collection costs including legal costs incurred by the Supplier calculated on a solicitor and client basis as a consequence of the Supplier instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier decides in its discretion.

## Credit and provision of information

33. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for business purposes or investment purposes (other than investment in residential property).
34. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
35. If the Applicant is a corporation, with the exception of a public listed company, it must advise the Supplier of any alteration to its corporate structure. (e.g. by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## Withdrawal or Variation of Credit

36. The Supplier may at any time, without reason, vary or withdraw any credit granted to the Applicant.

## Capacity/ relationship

37. These Terms and Conditions bind the Applicant both personally and as a trustee of any trusts of which the Applicant is a trustee.
38. If the Applicant is a partnership, the Applicant warrants that either:
- all of the partners have signed these Terms and Conditions and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier; or
  - the person who has signed these Terms and Conditions on behalf of the partnership is authorised by each partner of the partnership to agree these Terms and Conditions on behalf of the partnership.
39. If the Applicant consists of more than one person, the obligations of each person are joint and several.
40. The Applicant must keep confidential all prices, rebates and allowances offered by the Supplier.

## Waiver

41. A waiver of any provision or breach of these Terms and Conditions by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of these Terms and Conditions by the Applicant must be made by the Applicant's authorised officer in writing.

## Costs

42. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable in connection with these Terms and Conditions (if any).
43. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
44. The Applicant acknowledges and agrees that payments by the Applicant under clause 43 will be applied by the Supplier as follows:
- firstly, in payment of any and all collection costs and legal costs.
  - secondly, in payment of any interest incurred.
  - thirdly, in payment of the outstanding invoice(s).

## Taxes and duty

45. The Applicant must pay GST on any Taxable Supply made by the Supplier to the Applicant under these Terms and Conditions. The payment of GST is in addition to any other consideration payable by the Applicant for a Taxable Supply. The GST exclusive consideration otherwise to be paid or provided for that Taxable Supply is increased by the amount of any GST payable in respect of that Taxable Supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.
46. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the Taxable Supply.
47. To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

## Set-off

48. All payments required to be made by the Applicant under these Terms and Conditions will be made free of any set-off or counterclaim and without deduction or withholding.
49. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

## Warranty and Limitation of Liability of the Supplier

50. The Supplier warrants the parts, components, equipment manufactured or supplied by it, to be free from defects in material and workmanship.
51. Except as provided in this clause, to the extent permitted by law, all conditions and warranties implied by law which may be binding on the Supplier are excluded.
52. Upon return, transportation charges pre-paid to the Supplier's factory, within one year of original shipment, the Supplier will repair or replace, at its option, any equipment which it determines to contain defective material or workmanship, and will return said equipment to the Applicant, f.o.b. the Supplier's factory. The Supplier shall not be obligated, however, to repair or replace equipment which has been improperly installed, altered or otherwise misused or damaged in any way or repaired by others. The Supplier will not be responsible for any dismantling, re-assembly or re-installation charges.
53. Except as provided in clauses 50 - 54, and to the extent permitted by law, the Supplier has no liability (including liability in negligence) to any person for:
- any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods or advice, recommendations, information or services; and
  - in particular, without limiting clause 53(a) above, any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods, or advice, recommendations, information or services.
54. The Applicant warrants that it is acquiring the Goods for the purpose of re-supply or for the purpose of using them up or transforming them for production, manufacture or repairing or treating other goods or fixtures on land.

## Testing

55. Manufactured items are carefully inspected at the Supplier's works before despatch. If special tests are required, whether or not in the presence of the Applicant's representatives, details of such tests must be agreed upon in writing between the Supplier and Applicant at the time of requesting a quotation from the Supplier. Failure to do so may incur additional fees to be agreed between the parties.

## User Responsibility in Goods Selection and Disclaimer in regard to Advice

56. The Goods are inherently technical in nature and warranted to perform to specified tolerances in load, volume, air temperature etc. Due to the wide variety of conditions in which applications may operate, it is not possible for the Supplier to contemplate all technical parameters that are necessary in selecting Goods. The Applicant is required to provide all relevant information in relation to the intended use of the Goods and to ensure the Goods they order from the Supplier are suitable for and are used only for their intended use in accordance with any instructions on their use.
57. The Supplier accepts no responsibility for the provision of advice, unless that advice has been provided in writing and is in direct response to a written request from the Applicant, detailing the scope of the intended use and operating environment of the component or application.
58. The Applicant through its own analysis and testing is solely responsible for:
- making the final selection of the Goods by the Applicant;
  - that the incorporation of the Goods within an application will not provide any safety risk; and
  - assuring compliance with all applicable legislation and industry standards.

## Safety measures or compliance with standards

59. To the extent permitted by law, unless agreed to specifically in writing by the Supplier, any control circuit or control system, including hardware or software, does not in any way claim to offer any safety measures or compliance with any standard. It is the sole responsibility of the Applicant to ensure safety and compliance with all applicable legislation, the prevailing best practices, and the standards applicable to any individual application.

## Transport Applications

60. The supply of any Goods to be incorporated into any transport application is subject to that application meeting Australian Design Rules ("ADR") for vehicle or rail safety, including but not limited to the application incorporating a fail safe mode.

## Severance

61. If any provision of these Terms and Conditions are not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
62. If any part of these Terms and Conditions are invalid or unenforceable, that part is deleted and the remainder of the Terms and Conditions remain effective.

## Variation

63. These Terms and Conditions may be varied, added to, or amended at any time by the Supplier in its complete discretion without incurring any liability to the Applicant at any time by written notice to the Applicant. The Supplier will provide the Applicant with 7 days notice of such changes.

## Entire agreement

64. These Terms and Conditions constitute the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of these Terms and Conditions are merged in this agreement and are of no further effect.

## Jurisdiction

65. These Terms and Conditions are governed by the laws of the state of New South Wales. The Applicant submits to and consents to the jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

## Assignment

66. The Applicant may not assign or otherwise transfer its rights and obligations under these Terms and Conditions without the Supplier's prior written consent.
67. The Supplier may assign or otherwise deal with its rights under these Terms and Conditions or any obligation owed by the Applicant or any Guarantor, in such manner as it considers appropriate. The Applicant agrees that the Supplier may disclose any information or documents that it considers desirable to enable it to exercise this right. The Applicant also agrees that the Supplier may disclose information or documents in relation to the Applicant to any person to whom the Supplier assigns its rights under these Terms and Conditions.

## Privacy Act

68. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

## Definitions

69. In these Terms and Conditions unless the context requires otherwise:
- Applicant** means the applicant whose details appear in the Application for Commercial Credit and the Applicant's subsidiaries, holding companies and other related entities;
  - Corporations Act** means *Corporations Act 2001* (Cth);
  - Event of Default** means any of the following events:
    - the Applicant fails to pay for any Goods and/or the Applicant breaches these Terms and Conditions;
    - the Applicant ceases or threatens to cease carrying on business;

- (iii) if the Applicant is a company: it becomes an “externally administered body corporate” (within the meaning of the Corporations Act); or if the Applicant is a natural person: if they become an “insolvent under administration” (within the meaning of the Corporations Act or the Applicant dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Applicant under the control of another person (**Insolvency Event**);
- (d) **Goods** includes all products and services supplied by the Supplier to the Applicant;
- (e) **GST** means GST as defined in the *GST Act*;

- (f) **GST Act** means \*A *New Tax System (Goods and Services Tax) Act 1999* as amended, or any replacement or other relevant legislation and regulations;
- (g) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (h) **Supplier** means SMC Pneumatics (Australia) Pty Limited ABN 64 000 543 519 or SMC Manufacturing (Australia) Pty Ltd ABN 49 003 250 413, as indicated in the application for Commercial Credit, and the relevant entity’s related bodies corporate (as that term is defined in the Corporations Act)
- (i) **Taxable Supply** has the meaning set out in the *GST Act*; and
- (j) **Terms and Conditions** means these terms and conditions, including the Application for Commercial Credit, Privacy Act Authorisation and Deed of Guarantee and Indemnity.

**PRIVACY ACT 1988 AUTHORISATION**

To enable the Supplier to assess the commercial credit application or to review any existing commercial credit, the Applicant and Guarantors authorise the Supplier to obtain:

- a report from a credit reporting agency containing personal information about the Applicant, Directors and/or the Guarantors in relation to commercial credit provided by the Supplier (section 18K(1)(b) of the *Privacy Act 1988*); and
- a report containing information about the Applicant’s, Directors and/or the Guarantors’ commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to commercial credit provided by the Supplier (section 18L (4) of the *Privacy Act 1988*).

The Applicant authorises the Supplier to provide certain personal information about the Applicant under section 18E(8)(c) of the *Privacy Act 1988*. The information which may be given to a credit reporting agency is covered by section 18E(1) of the *Privacy Act 1988* and includes:

1. identity particulars as permitted by the *Privacy Act 1988* (for example, full name, sex, date of birth, current or last know address, previous two addresses, name of current or last known employer and driver’s licence number);
2. the fact that application for credit has been made and the amount;
3. the fact that the Supplier is a credit provider to the Applicant;
4. payments which become overdue more than 60 days for which collection action has commenced;
5. advice that payments are no longer overdue;
6. cheques drawn by the Applicant in excess of \$100 that have been dishonoured more than once;
7. in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
8. that the credit provided to the Applicant by the Supplier has been discharged.

This information may be given before, during or after the provision of credit to the Applicant

In accordance with section 18N(1)(b) of the *Privacy Act 1988*, the Applicant authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant’s credit arrangement. The Applicant acknowledges that the information can include any information about the Applicant’s credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988*.

The Guarantors acknowledge that the Supplier may seek from a credit reporting agency a credit report containing personal information about the Guarantors to assess whether to accept them as guarantors of credit applied for or granted to the Applicant. The Guarantors agree that, if the Supplier approves the application for credit, this authorisation remains in force until the facility covered by the application ceases

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

I/We have read the terms and conditions set out on pages 2 to 4 of this application and agree to abide by the same.

I/We hereby authorise SMC to investigate the trade references listed pertaining to my/our credit and financial position and to carry out any further investigation now or from time to time as may be deemed prudent to ensure my/our ongoing credit worthiness.

<b>Signature</b>	
<b>Name (print)</b>	
<b>Position</b>	
<b>Date</b>	

<b>Signature</b>	
<b>Name (print)</b>	
<b>Position</b>	
<b>Date</b>	

**SUPPLIER OFFICE USE ONLY**

<b>Prospect no.</b>		<b>Sales Area. No.</b>		<b>Target Cust. (circle)</b>	Yes/No
<b>Japanese Project Code</b>		<b>Customer Type</b>			
<b>Requested by</b>		<b>Requested credit limit</b>		<b>Date</b>	
<b>Approved by (Finance)</b>		<b>Approved credit limit</b>		<b>Date</b>	
<b>Opened by (Finance)</b>		<b>Account No.</b>		<b>Date</b>	

**Trade references**

<b>Business Name</b>		<b>How long a Customer</b>	
<b>Payment - Terms/Payment history</b>		<b>Average Monthly Purchases</b>	
<b>Description (circle)</b>	Slow/Average/Good/ Excellent	<b>Follow up or Stop Credit Required</b>	Yes/No

<b>Business Name</b>		<b>How long a Customer</b>	
<b>Payment - Terms/Payment history</b>		<b>Average Monthly Purchases</b>	
<b>Description (circle)</b>	Slow/Average/Good/ Excellent	<b>Follow up or Stop Credit Required</b>	Yes/No

<b>Business Name</b>		<b>How long a Customer</b>	
<b>Payment - Terms/Payment history</b>		<b>Average Monthly Purchases</b>	
<b>Description (circle)</b>	Slow/Average/Good/ Excellent	<b>Follow up or Stop Credit Required</b>	Yes/No

## DEED OF GUARANTEE & INDEMNITY

<b>To</b>	SMC Pneumatics (Australia) Pty Limited / SMC Manufacturing (Australia) Pty Limited		(Supplier)
<b>Name</b>		<b>Address</b>	
<b>Date of Birth</b>		<b>Driver Lic.</b>	
<b>Name</b>		<b>Address</b>	
<b>Date of Birth</b>		<b>Driver Lic.</b>	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

### Definitions

Capitalised terms in this Guarantee and Indemnity have the same meaning as in the Terms and Conditions attaching to the Application for Commercial Credit, unless the context requires otherwise.

### Consideration

1. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for Goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

### Guarantee and indemnity

2. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for Goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a Court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
3. This Guarantee and Indemnity is a continuing Guarantee and Indemnity. This Guarantee and Indemnity will not be considered as wholly or partially satisfied or discharged unless and until all of the guaranteed moneys have been paid in full.
4. Where two or more persons execute this Guarantee and Indemnity, the guarantees, covenants and obligations in this Guarantee and Indemnity given or undertaken by the Guarantors are deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier is entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
5. The Supplier has the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further the Supplier has the right to proceed against the Guarantors despite any other rights it may have in relation to the recovery of the amounts guaranteed.
6. This Guarantee and Indemnity continues in force until such time as the Supplier releases the Guarantors in writing, and despite the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
7. This Guarantee and Indemnity is without prejudice to and is not affected by nor are the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - (a) any variation (with or without the Guarantors' consent) made to any agreement between the Supplier and the Applicant (including the Terms and Conditions);
  - (b) the granting of any time credit, forbearance, indulgence or concession to a Guarantor or the Applicant in connection with the Applicant's obligations to the Supplier (even if such action increases the Guarantor's liability under this Guarantee and Indemnity);
  - (c) any other security taken by the Supplier from the Applicant or from any other person;
  - (d) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
  - (e) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this Guarantee and Indemnity; or
  - (f) any person named in this Guarantee and Indemnity as Guarantor failing to execute this Guarantee and Indemnity or failing or ceasing to be bound by the terms of this Guarantee and Indemnity.

### Right of subrogation

8. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors may not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
9. In the event of the Applicant going into liquidation, the Guarantors are prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

### Insolvency of Applicant

10. No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise, will for the purpose of this Guarantee and Indemnity, be considered as discharging or diminishing the Guarantor's liability and this Guarantee and Indemnity shall continue to apply as if the sum(s) had at all times remained owing by the Applicant.

### Payment

11. All payments to be made under this Guarantee and Indemnity must be made free of any set-off, deduction or withholding and in such a manner as the Supplier nominates.

### Costs

12. The Supplier may from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - (a) the account of the Applicant;
  - (b) this Guarantee and Indemnity;
  - (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
  - (d) the preparation, completion and stamping of this Guarantee and Indemnity; or
  - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this Guarantee and Indemnity;
 and the same is part of the monies secured by this Guarantee and Indemnity.
13. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this Guarantee and Indemnity including debt recovery agency fees and legal costs on an indemnity basis.
14. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations under this Guarantee and Indemnity.

### Variation

15. The Guarantors agree that this Guarantee and Indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant (including the Terms and Conditions), even if such variation or alteration has the effect of increasing the Guarantors' liability under this Guarantee and Indemnity.
16. This Guarantee and Indemnity cannot be varied except in writing.

### Jurisdiction

17. This Guarantee and Indemnity is governed by the laws of the state of New South Wales. The Guarantor submits to and consents to the jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

### Severance

18. If any provision of this Guarantee and Indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

### Security/charge

19. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 1 and 2.
20. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 1 and 2.
21. The Guarantors acknowledge and agree that:
  - (a) clauses 3 and 20 create a *security interest* in all present and after acquired personal property of the Guarantors for the amount of their indebtedness under this Guarantee and Indemnity;
  - (b) the Supplier is a *secured party* in relation to the personal property and any *proceeds* of the goods, and is entitled to register its interest on the *register* as a *security interest*;
  - (c) the Supplier may, by notice to the Guarantor, require the Applicant to take all steps requested by the Supplier to ensure its *security interest* in the personal property and the *proceeds* is enforceable, and to perfect, or better secure the position of the Supplier and the Guarantee must comply with that notice; and



(d) the Supplier is not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.

A term used in italics in this clause has the same meaning as in the PPSA.

22. This Guarantee and Indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this Guarantee and Indemnity constitutes the entire guarantee.

**Privacy Act**

23. The Guarantors agree to the terms of the *Privacy Act 1988* authorisation contained in this document.

<b>Dated</b>				
<b>Signed, sealed and delivered by the guarantor</b>	<b>Guarantor 1 Signature</b>		<b>Name</b>	
			<b>Relationship to Applicant</b>	
	<b>Witness signature</b>		<b>Name</b>	
	<b>Witness address</b>			
<b>Signed, sealed and delivered by the guarantor</b>	<b>Guarantor 2 Signature</b>		<b>Name</b>	
			<b>Relationship to Applicant</b>	
	<b>Witness signature</b>		<b>Name</b>	
	<b>Witness address</b>			