

**FAKOS NOMINEES PTY. LTD. (A.C.N. 065 689 885) trading as
BOLTS GALORE (PAKENHAM) CREDIT APPLICATION FORM**

SECTION 1 – THE CUSTOMER

ENTITY TYPE Sole Trader Partnership Company Trust

ENTITY NAME (if trust, print name of trustee) _____

TRADING NAME _____

ABN: _____ ACN (if company) _____

TRADING ADDRESS _____

STATE: POSTCODE:

POSTAL ADDRESS (Leave blank if same as trading address)

STATE: POSTCODE:

ACCOUNTS PAYABLE CONTACT PERSON _____

BUSINESS TEL NUMBER: _____ ACCOUNTS TEL NUMBER: _____

ACCOUNTS EMAIL: _____

SECTION 2 – OWNERSHIP DETAILS

PARTNER / DIRECTOR / TRUSTEE #1

SURNAME: _____

GIVEN NAMES: _____

ADDRESS: _____

STATE POSTCODE

PARTNER / DIRECTOR / TRUSTEE #2

SURNAME: _____

GIVEN NAMES: _____

ADDRESS: _____

STATE POSTCODE

BOLTS GALORE (PAKENHAM) CREDIT APPLICATION FORM

SECTION 3 – BUSINESS DETAILS

Year business commenced: _____

Has the business had any judgments against it in the last 5 years? YES NO

Has any partner, director or principal:

▪ Entered into bankruptcy or a Part X arrangement? YES NO

▪ Had a judgment against them in the last 5 years? YES NO

▪ Been the director of a company that has gone into liquidation or receivership? YES NO

If yes, please provide details

SECTION 4 – TRADE REFERENCES

1.

Business Name: _____

Phone No. _____ Fax No. _____

Email: _____

2.

Business Name: _____

Phone No. _____ Fax No. _____

Email: _____

3.

Business Name: _____

Phone No. _____ Fax No. _____

Email: _____

APPROVED CREDIT LIMIT: _____

BOLTS GALORE (PAKENHAM) CREDIT APPLICATION FORM

ACCEPTANCE OF TERMS AND CONDITIONS

1. I/we have read and understand and agree to be bound by the Terms and Conditions.
2. I/we covenant that the information supplied in this application is true and correct.
3. I/we acknowledge full payment of invoices is strictly due within 30 days from the end of month of the invoice date.
4. I/we acknowledge that in the event of default, interest may be charged at 12% p.a. compounded monthly, and in the event where an overdue account is referred to a collection agency and/or solicitors, I/we will be liable for all legal costs on the indemnity basis, whether incurred by us or by the collection agency and in the event where the collection agency charges commission, the commission which would be charged if it achieves 100% recovery shall be added to the debt and the total shall be treated as a liquidated debt.

Signed by on behalf of the Customer
(print full name(s))

Position held: Date:

DEED OF GUARANTEE AND INDEMNITY

I / We
of

(“the Guarantors”) in consideration of FAKOS NOMINEES PTY. LTD. (“the Supplier”) providing credit to the within-named Customer (“the Customer”) at our request **DO HEREBY** for ourselves and respective executors and administrators jointly and severally covenant with the Supplier that if at any time default shall be made in the payment of any monies payable by the Customer to the Supplier we will forthwith on demand by the Supplier pay to it the whole of such monies which shall then be due and payable to the Supplier and will keep the Supplier indemnified against all losses costs charges and expenses whatsoever which the Supplier may incur by reason of any default on the part of the Customer in complying with the trading terms and conditions of the Supplier.

EXECUTED AS A DEED on the day of 20.....

SIGNED SEALED AND DELIVERED)
by the said) Guarantor to sign here
in the presence of:)

Witness name and signature Witness to sign here

SIGNED SEALED AND DELIVERED)
by the said) Guarantor to sign here
in the presence of:)

Witness name and signature Witness to sign here

BOLTS GALORE TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. The Supplier is Fakos Nominees Pty. Ltd. (A.C.N. 065 689 885) /as Bolts Galore of 7 Tova Drive, Carrum Downs VIC 3201.
- 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 1.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 1.5. The Goods are the products provided by the Supplier.
- 1.6. The Price is the amount invoiced by the Supplier.
- 1.7. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.8. Major failure refers to Major failure as defined under the *Competition and Consumer Act 2010*.

2. GENERAL

- 2.1. These Terms and Conditions, the Supplier's Credit Application Form and the Supplier's quotation comprise this Agreement.
- 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 2.6. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 2.8. A failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

3. PLACEMENT OF ORDERS

- 3.1. Orders placed by the Customer with the Supplier will be considered valid when placed verbally and/or in writing.
- 3.2. Any Quotation given by the Supplier shall expire thirty (30) days after the date of the quotation.
- 3.3. GST will be charged by the Supplier at the applicable rate if the Order includes components that attract GST.
- 3.4. All Prices are based on current taxes and statutory charges and should these vary during the period from the date of the Order or a purchase order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. SUPPLY AND DELIVERY OF GOODS AND/OR SERVICES

- 4.1. All orders under the value of \$150.00 will incur a delivery fee.
- 4.2. The Supplier may, at its discretion, round off ordering quantities within a 10% variance to deliver full cartons where possible.
- 4.3. At any time before payment is made by the Customer, the Supplier reserves their right to:
 - 4.3.1. Decline requests for any Goods/Services from the Customer.
 - 4.3.2. Cancel or postpone the supply of Goods/Services at their discretion.
- 4.4. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 4.5. If the Customer fails to make all arrangements necessary to take delivery of the Goods, the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 4.6. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods/Services at specific times requested by the Customer during the term of this Agreement.
- 4.7. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations of those Goods.
- 4.8. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods to be provided.
- 4.9. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.

5. CREDIT POLICY

- 5.1. **Non-credit Customers** must make payment upon supply and/or delivery of the Goods.
- 5.2. **Credit Customers** must make payment within thirty (30) days from the end of month of the Supplier's invoice date.
- 5.3. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 5.4. The Supplier has the right to refuse to supply goods on credit if the Customer's credit limit has been reached or would be reached by the supply of those goods.
- 5.5. Any credit granted may be revised by the Supplier at any time and at its discretion.
- 5.6. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of this Agreement or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 5.7. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

6. PAYMENT AND DEFAULT

- 6.1. For the purposes of this clause, the "default date" is the day after the date by which payment of the Price in full was due to be made by the Customer to the Supplier in accordance with the agreement and the "outstanding balance" is the Price, less any payments made by the Customer prior to the default date.
- 6.2. To the extent permitted by law, if the Supplier does not receive the outstanding balance on or before the default date the Customer acknowledges and agrees that:
 - 6.2.1. The Customer may be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank;
 - 6.2.2. The Customer will be liable for interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 6.2.3. In the event the Supplier refers the Customer to a debt collection agency and/or law firm for collection of the outstanding balance, the Customer shall be liable for the recovery costs incurred, and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\text{Commission} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission\% charged by agency inc GST}}$$

- 6.2.4. In the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au
- 6.2.5. In the event where the Supplier or the Supplier's agency refers the outstanding balance to a lawyer the Customer shall pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

7. RISK AND LIABILITY

- 7.1. The Customer acknowledges it is solely responsible for ensuring that the Goods ordered are fit for the required purpose. The Supplier takes no responsibility if the specifications requested by the Customer are wrong, inaccurate or insufficient.
- 7.2. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party/third party manufacturer which was or is beyond the Supplier's reasonable control.
- 7.3. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any indirect, special or consequential loss incurred as a result of delay or failure to provide the Goods and/or services or to observe any of these conditions due to an event of force majeure for any cause or circumstance beyond the Supplier's reasonable control.
- 7.4. The Supplier does not represent that it will provide and/or deliver any Goods/Services unless it is included in the Supplier's quotation or written order confirmation.
- 7.5. Subject to clauses 8.1 and 8.2, the Customer accepts risk in relation to the Goods when the Goods pass to his care and/or control.

8. WARRANTY

- 8.1. The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable Law in relation to the goods and services to which the warranty relates.
 - 8.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia
- Warranty for Goods**
- 8.3. For Goods and/or components not manufactured by the Supplier, the warranty for Goods supplied shall be the current warranty provided by the manufacturer. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.
 - 8.4. For Goods supplied and/or manufactured by the Supplier, the Supplier warrants:
 - 8.4.1. Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement

or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods or services repaired or replace if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.

- 8.5. If the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods and Services is limited to, at the discretion of the Supplier:

- 8.5.1. The resupply of the Goods and Services;
- 8.5.2. The payment of the cost of providing the Goods and Services again.

Claims made under Warranty

- 8.6. Claims for warranty should be made within fourteen (14) days by sending the claim in writing together with proof of purchase to the Supplier:
 - 8.6.1. By post to 7 Tova Drive, Carrum Downs VIC 3201; or
 - 8.6.2. By email to accounts@boltsgalore.com.au.

Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

9. RETURN OF GOODS

- 9.1. Goods may be returned for credit to the Supplier's business address stated in clause 2.1 if they are:
 - 9.1.1. Returned within fourteen (14) days from the date of delivery of the Goods;
 - 9.1.2. Returned in an undamaged and saleable condition in their original packaging.
The Customer shall bear any costs for returning the Goods.

10. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 10.1. The Supplier may cancel any Order prior to delivery of the Goods by giving written notice to the Customer. In this event:
 - 10.1.1. The Supplier shall repay to the Customer any sums paid in respect of the Order.
 - 10.1.2. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:

- 10.2.1. Any money payable to the Supplier becomes overdue; or
- 10.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

The Customer may cancel any Order prior to delivery of the Goods by giving written notice to the Supplier. In this event, the Customer shall be liable for any loss incurred by the Supplier with respect to the Order up to the date of cancellation, including but not limited to any loss of profits.

11. SET-OFF

- 11.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

12. JURISDICTION

This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

13. PRIVACY ACT 1988

- 13.1. The Customer and/or the Guarantor/s agrees;
 - 13.1.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
 - 13.1.2. That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

14. ENTIRE AGREEMENT

- 14.1. These Terms and Conditions as defined in Clause 2.1 constitute the whole Agreement made between the Customer and the Supplier.
- 14.2. This Agreement can only be amended in writing signed by each of the parties.
- 14.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 14.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.