

# CREDIT ACCOUNT APPLICATION



## ENTITY DETAILS

Business (Applicant's) full legal name				
Trading name				
<input type="checkbox"/> Proprietary limited company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole trader	<input type="checkbox"/> Individual	ABN _____
<input type="checkbox"/> Public company	<input type="checkbox"/> Trust	<input type="checkbox"/> Other (please state)		ACN _____
Postal address				Post code
Physical address				
which is <input type="checkbox"/> owned <input type="checkbox"/> rented/leased				
Telephone	A/H	Mobile	Fax	
Nature of business				
Years in current business	No. of staff	Est. monthly spend \$		
Contact names	Manager	DDI	Email	
	Accounts	DDI	Email	
Email address for receiving invoices/credits/statements				

### OWNERSHIP & ADVISORS (please insert ALL beneficial owner(s)/Partner(s)/Director(s)/Trustee(s) details in full as applicable – please use additional sheet of paper if required - for individuals, please provide residential address)

Name			DOB
Address			
Home phone	Mobile	Email	
Name			DOB
Address			
Home phone	Mobile	Email	
Name			DOB
Address			
Home phone	Mobile	Email	
<b>Affiliated or parent companies</b>			
Bank		Accountant	
Solicitor			

### TRADE REFERENCES (from non-associated/related entities please)

Name		Telephone
Address		
		Email
Name		Telephone
Address		
		Email
Name		Telephone
Address		
		Email

# CREDIT ACCOUNT APPLICATION



## Application

1. I/We agree that the purchase of any goods from ETEL Transformers PTY Limited ("**ETEL**") is subject to ETEL's General Terms and Conditions of Sale (which include security provisions) attached ("**Terms**").
2. I/We confirm that the information that I/we provide in or with this application is correct, complete and up to date in all respects and I/we will immediately inform ETEL in writing if at any time this is not the case and that ETEL will rely on the representations made in this application.
3. I/We confirm that if the Applicant is a body corporate, ETEL may at any time before or during the operation of the credit facility require one or more of the Applicant's directors and/or officers to guarantee repayment of the credit facility. If a director/officer who has provided such a guarantee vacates their office, the Applicant must notify ETEL in writing within 14 days.
4. I/We confirm that in the event that full payment is not received by the due date the credit facility may be suspended or cancelled without notice. Reinstatement of credit terms after any suspension will be at the sole discretion of ETEL.
5. I/We acknowledge that ETEL may suspend or terminate the credit facility immediately (with or without written notice) if:
  - a. the Applicant:
    - i. obtains credit by fraud, dishonesty or omission;
    - ii. allows the amount of a monthly statement to remain unpaid for more than 5 days from its due date;
    - iii. breaches any of these terms and conditions;
    - iv. being an individual, commits an act of bankruptcy;
    - v. being a body corporate, becomes externally administered;
  - b. ETEL believes that the continued use of the credit facility may cause loss or damage to the Applicant or ETEL;  
or
  - c. one or more persons guarantee the Buyer's obligations under the credit facility - that person or those persons withdraws his, her or their guarantee.
6. I/We confirm that if the credit facility is suspended or cancelled then ETEL may require immediate payment of all outstanding amounts and any such suspension or cancellation does not affect any of the Applicant's obligations in respect of the credit facility.
7. The Buyer must pay to ETEL all amounts reasonably incurred or expended by ETEL in exercising its rights as a result of a breach of these terms and conditions by the Applicant or as a result of any circumstance referred to in clause 5.
8. I/We confirm that I/we have the authority and capacity to bind the Applicant.

## Privacy notice, acknowledgement and consent

1. ETEL collects, holds, uses and discloses personal information including credit related personal information (personal information) in accordance with its privacy policies ("**Relevant Privacy Policies**") which are available at [www.eteltransformers.com.au](http://www.eteltransformers.com.au).
2. In providing an account and/or its goods and/or services ETEL may collect, hold, use and disclose personal information in accordance with the Relevant Privacy Policies. The Relevant Privacy Policies set out how ETEL will collect, hold, use, disclose and otherwise manage personal information in accordance with the Privacy Act 1988 (Cth) ("**Privacy Act**"), the 13 Australian Privacy Principles ("**APPs**") in the Privacy Act and the Credit Reporting Code implemented pursuant to the Privacy Act ("**CR Code**").
3. The individual(s) about whom ETEL may need to collect, hold, use and disclose personal information may include the Buyer or the Buyer's director(s) or any other individuals relevant to the Buyer's application including, but not limited to, signatories of this form ("**Relevant Individuals**"). In particular, ETEL may require personal information about Relevant Individuals for the purposes set out in the Relevant Privacy Policies, including the purposes of assessing this Application or any other applications for an account or whether to accept a Relevant Individual as a guarantor. This may include ETEL collecting a Relevant Individual's personal information from, or disclosing a Relevant Individual's personal information to, a credit reporting body or other information source (including information about the failure to make a payment in accordance with the Terms). This may result in a credit reporting body or other information source including

ETEL OFFICE USE ONLY

APPROVED BY

DATE

# CREDIT ACCOUNT APPLICATION



the

information disclosed to it by ETEL about a Relevant Individual in reports that are then provided to other credit providers for the purposes of those providers assessing the Relevant Individual's credit worthiness.

4. ETEL may also collect a Relevant Individual's personal information from, or disclose a Relevant Individual's personal information to, another credit provider for the purpose of ETEL or the other credit provider assessing the Buyer's application for credit, the Relevant Individual's credit worthiness, assisting the Buyer or Relevant Individual in avoiding defaulting, and/or assessing whether to accept a Relevant Individual as a guarantor.
5. ETEL may also disclose a Relevant Individual's personal information to the Buyer or the Buyer's or ETEL's related bodies corporate, professional advisors, business partners, contractors, suppliers, consultants, insurers or third party service providers that assist ETEL or the Buyer with the provision or management of goods and/or services and/or administrative requirements, other credit providers, debt collection and recovery service providers, guarantors or prospective guarantors, entities that may have an interest in ETEL, regulatory bodies and any other person or entity set out in the Relevant Privacy Policies or otherwise authorised by the Relevant Individual or law.
6. If a Relevant Individual does not provide the personal information as requested, ETEL may not be able to consider the application for an account, provide an account to the Buyer or otherwise provide goods or services to the Buyer. Relevant Individuals who have any concerns about ETEL's handling of their personal information can direct those concerns to [privacy@eteltransformers.com.au](mailto:privacy@eteltransformers.com.au) in accordance with the Relevant Privacy Policies. The Relevant Privacy Policies contain details of how Relevant Individuals can request access to, or correction of, personal information held about them by ETEL, or otherwise make complaints or inquiries with respect to the handling of their personal information by ETEL, and the ways in which such complaints will be dealt with by ETEL.
7. The Relevant Individuals acknowledge and give consent to ETEL:
  - a. making enquiries with credit reporting bodies or other information sources, and collecting their personal information for the purposes of assessing this Application;
  - b. using and/or disclosing their personal information obtained as a result of or in connection with enquiries made for the purposes of assessing this Application; and
  - c. collecting, holding, using and/or disclosing personal information otherwise in accordance with the Relevant Privacy Policies, the Privacy Act, the APPs, the CR Code or other applicable law.

## SIGNED ON BEHALF BY THE APPLICANT BY

Print name	Signed
Designation     Director / Owner / Partner / Trustee / Other <i>(please circle)</i>	Date     _____
Print name	Signed
Designation     Director / Owner / Partner / Trustee / Other <i>(please circle)</i>	Date
Print name	Signed
Designation     Director / Owner / Partner / Trustee / Other <i>(please circle)</i>	Date     _____

### Notes

1. If the Buyer is a sole trader or partnership, all owner(s)/partner(s) should sign the declaration.
2. If the Buyer is a company, ALL Directors must sign the declaration.
3. If the Buyer is a Trust, all Trustees must sign the declaration.

<b>ETEL OFFICE USE ONLY</b>	<b>APPROVED BY</b>	<b>DATE</b>
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**1 SCOPE**

- 1.1 These terms and conditions of sale ("**Terms**") apply to the supply of Goods by ETEL to the person specified in the relevant Purchase Order as the buyer of the Goods ("**Buyer**").
- 1.2 These Terms apply to the exclusion of any inconsistent terms proposed by the Buyer or which the Buyer purports to apply to the supply of the Goods.
- 1.3 In the event there is a conflict between these Terms and any terms shown in the relevant Purchase Order, these Terms will prevail.
- 1.4 From time to time, the Buyer may issue a Purchase Order to ETEL, and such Purchase Order:
  - (a) is an offer by the Buyer to purchase the relevant Goods from ETEL, on these Terms, as at the date shown in the Purchase Order;
  - (b) may be accepted by ETEL by notifying the Buyer;
  - (c) upon acceptance, will form an individual and legally binding and enforceable contract between ETEL and the Buyer ("**Contract**") that is governed by these Terms.
- 1.5 Delivery of Goods pursuant to a Buyer's order containing terms inconsistent with these Terms will be deemed a counteroffer and the Buyer's acceptance of the Goods delivered will constitute the Buyer's acceptance of these Terms.
- 1.6 ETEL's failure to enforce or delay in enforcing any part of these Terms shall not be deemed a waiver of these Terms unless agreed in writing by ETEL.
- 1.7 ETEL may require the Purchase Order to be in a specific form to be valid, including by requiring the Buyer to provide a Purchase Order in writing on a form supplied by ETEL.
- 1.8 ETEL may amend these Terms from time to time by publishing an amended version of these Terms on its website at <http://www.eteltransformers.com.au> and the modified Terms will apply to all Contracts entered into after such modified Terms are published. No changes may be made to these Terms without ETEL's prior written consent.

**2 PAYMENT TERMS, TITLE, RISK**

- 2.1 Unless ETEL has pre-approved the operation by the Buyer of a credit account or ETEL otherwise agrees in writing, ETEL may issue an invoice for the full amount payable for the Goods prior to the Goods being despatched, which will be payable in full prior to, and as a condition of, the Goods being despatched.
- 2.2 Notwithstanding clause 2.1, ETEL may in its discretion require payment of a deposit or progress payment (in part or full payment of the price of the Goods supplied to the Buyer) at any time prior to despatching the Goods to the Buyer (including, if specified by ETEL, prior to ETEL commencing manufacture of the Goods), in which case the Buyer must pay the amount specified on the invoice by the due date for payment specified on the invoice (or, if no date is specified, the 20<sup>th</sup> of the month following the date of invoice).
- 2.3 If ETEL has pre-approved the operation by the Buyer of a credit account and has specified on the relevant Purchase Order that the price of the Goods is payable other than prior to despatch, then ETEL may issue an invoice or invoices in accordance with the payment schedule contemplated, in which case the Buyer must pay the amount specified on the invoice by the due date specified for payment on the invoice (or, if no date is specified, the 20<sup>th</sup> of the month following the date of invoice or and in accordance with such other credit terms previously approved by ETEL in writing).
- 2.4 If the Buyer fails to pay any amount owing to ETEL by the due date, ETEL may charge the Buyer default interest on any overdue amount at the rate of 5% above ETEL's banker's current overdraft rate per annum, which shall accrue on a daily basis from the due date for payment until all amounts owing are paid in full and shall be payable on demand.
- 2.5 All payments due to ETEL are to be made in full on the due date without deduction of any nature whatsoever whether by way of set off, counterclaim or other equitable or lawful claim or otherwise.
- 2.6 Unless otherwise agreed in writing, delivery of the Goods will occur on the time and date on which the Goods arrive at the Buyer's nominated address for delivery and are made available for unloading, for the avoidance of doubt, not when those Goods are unloaded onto the site at that nominated address ("**Delivery**").

- 2.7 ETEL may charge and the Buyer must pay costs incurred by ETEL in connection with a delay in unloading the Goods, or failure to unload the Goods, following Delivery.
- 2.8 Legal and equitable title, property and ownership in the Goods will remain with ETEL until ETEL has received in full, cleared funds the price for such Goods without any deduction or set off.
- 2.9 The risk of loss or damage to Goods will pass on Delivery and, unless otherwise agreed by ETEL in writing, ETEL will not be liable for:
  - (a) any loss or damage to the Goods arising in connection with the offloading of the Goods following Delivery;
  - (b) without prejudice to clause 5.2, any costs and charges arising in connection with the Goods, including costs to unload the Goods to the Buyer's site, following Delivery.
- 2.10 Part payment of any amount for the Goods does not convey any part right, title, and/or interest in the Goods.
- 2.11 Without prejudice to any other rights or remedies available to ETEL under these Terms or otherwise, until full title, property and ownership of the Goods passes to the Buyer and while the Goods remain in the Buyer's full control and possession:
  - (a) ETEL will be entitled to enter any premises where Goods supplied by ETEL are situated, repossess and sell such Goods (subject to these Terms) if the Buyer does not make a payment to ETEL when due under these Terms or does not otherwise comply with these Terms, commits an act of bankruptcy, makes an arrangement with all or any number of its creditors or if any creditor of the Buyer takes any steps to recover monies due by the Buyer or has grounds for taking any such steps or has a receiver appointed or goes into liquidation (voluntarily or otherwise); and
  - (b) the Buyer must insure the Goods for their full replacement value (which must not be less than the Price).
- 2.12 The Buyer will indemnify ETEL and keep ETEL indemnified on demand in respect of any losses, liabilities, damages, claims, actions or costs or expenses (including legal costs and disbursements) incurred or suffered by ETEL arising out of or in connection with:
  - (a) the removal, repossession and sale of Goods pursuant to clause 2.11;
  - (b) the Buyer's breach of these Terms or a Contract.
- 2.13 The Buyer expressly authorises and grants ETEL and its agents an express, irrevocable licence to enter the premises of the Buyer or relevant third party in order for ETEL to deliver the Goods, or at any time to repossess Goods or to the extent required to permit ETEL to comply with its obligations regarding a warranty claim, as permitted in accordance with these Terms.
- 2.14 The Buyer may, subject to obtaining ETEL's prior written approval, on-sell the Goods or any part of them prior to title passing to the Buyer under clause 2.8 but only in the ordinary course of its business and provided that the Buyer:
  - (a) pays the sale proceeds into a separate bank account relating only to the sale proceeds of any Goods;
  - (b) holds the sale proceeds on trust for ETEL; and
  - (c) must as soon as possible pay to ETEL the sale proceeds in satisfaction of any amount owed by the Buyer in respect of the on-sold Goods.
- 2.15 If and when the full amount due to ETEL in respect of the on-sold Goods has been received by ETEL, any further sale proceeds may be retained by the Buyer.
- 2.16 The Buyer must immediately cease the on-sale of any Goods under clause 2.14 if:
  - (a) ETEL revokes any consent it has given to the Buyer to resell the Goods under clause 2.14; or
  - (b) the Buyer fails to make any payment under the Contract by the relevant due date.
- 2.17 If the Buyer processes, incorporates, transforms or installs the Goods (or any portion of them) into any other goods, buildings or land to be sold then the Buyer must:
  - (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods, buildings or land in which the Goods have been processed, incorporated, transformed or installed; and
  - (b) hold a proportion of any payment ("**Relevant Proportion**") received by the Buyer for those goods, buildings or land on trust for ETEL and the Buyer acknowledges that the Relevant Proportion must be not

less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.

**3 DEFAULT**

3.1 If the Buyer defaults in performing any of its obligations under these Terms, then without prejudice to any other rights or remedies available to ETEL under these Terms or otherwise, ETEL may:

- (a) require that all amounts invoiced to the Buyer under the relevant Contract or any other Contract then in force become immediately due and payable;
- (b) suspend any further supply of Goods to the Buyer until the default is remedied;
- (c) terminate the relevant Contract or any other Contract then in force;
- (d) revoke any credit accommodation provided to the Buyer and require that all further supplies of Goods be on a cash on or before delivery basis; and
- (e) recover all debt collection and legal expenses ETEL incurs in connection with the enforcement or attempted enforcement of these Terms.

3.2 Without affecting clause 3.1, if at any time ETEL reasonably considers the Buyer's credit to be unsatisfactory, ETEL may require payment for all further supplies of Goods under any Contract to be made in cash on or before delivery.

**4 PRICES**

4.1 All prices quoted are based on the current costs of raw materials purchased, processed materials and components and the rate of import duties, currency exchange rates, wages and other costs ("**Costs**") prevailing as at the date of quotation are subject to change due to increases in the Costs unless otherwise stated in the relevant quote.

4.2 To accept a quote, the Buyer must do so in writing within the time set out in this clause. Quotations are valid for acceptance for 30 (thirty) days from quotation date (or such other period specified by ETEL in writing). ETEL may prior to the expiry of the acceptance period, agree in writing to extend the acceptance period for a further specified period. Without limiting or affecting clause 4.1, ETEL may alter or withdraw a quote at any time before it receives the Buyer's acceptance of that quote under this clause.

4.3 Unless the context indicates otherwise, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.

4.4 If GST is payable on any supply made by ETEL under these Terms, the Buyer must pay to ETEL, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Buyer is required by these Terms to reimburse or indemnify ETEL for any loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that ETEL will be entitled to claim for the loss or amount incurred and increased by the amount of any GST payable by ETEL in respect of the reimbursement or payment.

4.5 All prices (whether quoted or otherwise) are exclusive of GST and all other forms of taxation, withholding, duties, charges, dues, levies, rates, customs or excise duties ("**Taxes**") unless ETEL specifies otherwise in writing. The Buyer will pay any Taxes payable in respect of the Goods supplied as specified in ETEL's tax invoice.

**5 FREIGHT AND PACKAGING**

5.1 Delivery and despatch dates are estimates only. ETEL will use reasonable endeavours to deliver the Goods at the time requested by the Buyer, or if no time is requested, within a reasonable time of the order being placed. ETEL will not in any circumstances be liable for late delivery and late delivery does not entitle the Buyer to cancel all or part of any order.

5.2 Unless otherwise agreed in writing by an authorised officer of ETEL, the Buyer will pay all packaging and freight charges associated with the Delivery of Goods to the Buyer at the then current rates advised by ETEL.

**6 ACCEPTANCE**

6.1 The Goods will be deemed to have been accepted by the Buyer if no Defect is notified to ETEL in accordance with clause 6.2 within 10 Business Days following the date of Delivery.

6.2 If, upon inspection, the Buyer identifies a Defect, the Buyer must immediately notify ETEL in writing of the nature of the Defect, and the Buyer's sole remedy will be to require ETEL to repair or replace the Goods (or those components of the Goods that are the subject of the Defect) at ETEL's option but at no cost to the Buyer, within a reasonable period after the date on which the Buyer notified ETEL under this clause 6.2.

6.3 Except as provided otherwise in these Terms, Goods cannot be returned without ETEL's prior written consent and then subject to such terms as ETEL may impose.

**7 WARRANTIES**

7.1 ETEL warrants that the Goods will be free from faults in design, materials and/or workmanship for 12 months from the date of Delivery or such later date as specified by ETEL in the relevant quote ("**Warranty Period**") provided that the Goods have been operated within their design specification, have not been altered or damaged and (unless ETEL agrees otherwise in writing) are returned freight paid to ETEL's premises within the Warranty Period.

7.2 The benefits given by the warranty in clause 7.1 are in addition to the Consumer Guarantees and any other statutory rights and remedies the Buyer may have under the Australian Consumer Law and/or other laws.

7.3 Where ETEL is providing the Goods to the Buyer as a Consumer, 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 repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

7.4 Following acceptance of the Goods, and following the rectification of any Defects as contemplated by clause 6.2, the Buyer's sole remedy in respect of a breach of the warranty given by ETEL in clause 7.1 will be limited to, at ETEL's option:

- (a) correcting defects in the Goods by repair or replacement;
- (b) bringing the Goods into conformity with any previously agreed specification; or
- (c) damages in an amount not exceeding the contract price for the relevant Goods.

7.5 Except as otherwise required by law, by submitting a Purchase Order, the Buyer confirms that it has satisfied itself that the Goods will be fit for the purposes for which the Buyer requires the Goods and is not relying on any statement or representation by or on behalf of ETEL in connection with its decision to order the Goods.

7.6 The warranty in clause 7.1 shall apply only to Goods manufactured by ETEL. Any parts or components obtained by ETEL from other sources and used in the manufacture of the Goods are not covered by the warranty. ETEL will extend to the Buyer the benefit of any warranty covering such parts or components which is given to ETEL by the original manufacturer.

7.7 Subject always to any overriding obligation of ETEL pursuant to the Australian Consumer Law, the warranties in these Terms will not apply where:

- (a) the Goods are not installed in accordance with any installation instructions provided prior to, or with the Goods at, Delivery and any other requirements regarding the installation of the Goods under any applicable laws or regulation or good industry practice;
- (b) the Goods have not been used or installed in accordance with any recommendations or guidelines provided or published by ETEL or applicable laws or regulations;
- (c) the Goods have not been serviced and/or maintained in accordance with any recommended servicing schedule or recommendations or guidelines provided or published by ETEL from time to time; or
- (d) the Goods have not been serviced, maintained or repaired by a person who is suitably qualified to provide servicing, maintenance or repair services in respect of the Goods or otherwise in accordance with good industry practice; or
- (e) a Defect results from overloading, misuse, negligence, accident, unauthorised modification, tampering or other cause beyond the direct control of ETEL.

7.8 Except as stated in these Terms or as otherwise required by law ETEL:  
 (a) does not give any representation, guarantee or warranty in relation to the Goods, including any warranty that the Goods will be fit for purposes for which goods of the same type as the Goods are

- commonly supplied, or for the Buyer's specific purposes and to the maximum extent permitted by law, all such representations, guarantees or warranties are excluded;
- (b) will not be liable for costs in connection with labour, standby, freight, transportation, travel or travel time, packaging and handling, demobilisation or remobilisation, commissioning and testing or with making any warranty claim;
  - (c) will not be liable to the Buyer for any indirect or consequential losses, loss of profits, loss of revenue, loss of anticipated savings, loss of goodwill or reputation, or loss of commercial opportunity (in each case whether direct or indirect).
- 7.9 Nothing in these Terms or any Contract will in any way exclude or attempt to exclude a party's liability to the other for:
- (a) fraud or fraudulent misrepresentation; and/or
  - (b) any other matter for which it would be illegal to exclude or attempt to exclude a party's liability.
- 7.10 The Buyer must give written notice to ETEL of any event or circumstance which may give rise to a warranty claim by the earlier of:
- (a) the time expressly required by the manufacturer's warranty for the notification of claims, if any such time applies; or
  - (b) if no such time applies, within 30 Business Days of the event or circumstance occurring that gave rise to the warranty claim, and in any event, within the relevant warranty period stipulated in clause 7.1.
- 7.11 Any Goods which are repaired pursuant to a warranty claim made in accordance with this clause 7 will be warranted under the warranty only for the remainder of the original Warranty Period.
- 7.12 To make a warranty claim, the Buyer must:
- (a) lodge the claim with ETEL as soon as possible and no later than 20 Business Days after the date of a notice given under clause 7.10 by sending an email to [etel@eteltransformers.com.au](mailto:etel@eteltransformers.com.au) or in writing to 21 Healey Road, Dandenong South, Victoria 3174;
  - (b) provide ETEL with proof of purchase of the Goods; and
  - (c) provide ETEL with details relating to the proposed warranty claim.
- 7.13 The person who gives the warranties in these Terms is:
- ETEL Transformers Pty Limited of 21 Healey Road, Dandenong South, Victoria 3175  
 Telephone +1800 458 126  
 Email [etel@eteltransformers.com.au](mailto:etel@eteltransformers.com.au)
- 7.14 If the Buyer fails to notify in accordance with clauses 7.10 and 7.12, ETEL may, in its sole discretion, rectify the defect but otherwise has no liability to do so.
- 7.15 No agent or representative of ETEL is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these Terms ("**Statements**") and ETEL is not in any way bound by any such Statements.
- 7.16 These Terms:
- (a) contain the entire agreement between the parties with respect to the subject matter of these Terms;
  - (b) set out the only conduct relied on by the parties; and
  - (c) supersede all earlier conduct and prior agreements, representations, and understandings between the parties in connection with the subject matter of these Terms.
- 8 FORCE MAJEURE**
- 8.1 ETEL will not be liable for any breach of these Terms or failure to supply Goods where such breach or failure is caused by an event beyond ETEL's reasonable control ("**Force Majeure Event**") and which will include, without limitation, any act or omission of ETEL's subcontractors or suppliers which is beyond ETEL's reasonable control.
- 8.2 If a Force Majeure Event occurs, ETEL may suspend Delivery or extend the Delivery time of the Goods affected, by a period equal to the duration of the Force Majeure Event.
- 9 CANCELLATION BY BUYER**
- 9.1 Except with the prior written consent of ETEL and then subject to any terms ETEL may impose, no Contract may be cancelled by the Buyer.
- 10 LIABILITY**
- 10.1 If the Buyer is a Consumer, ETEL acknowledges that the Buyer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the Goods supplied by ETEL and (other than clause 10.2) nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 10.2 If the Buyer is a Consumer, ETEL's liability to the Buyer in connection with any breach of the Consumer Guarantees in respect of the Goods is limited (at ETEL's discretion) to the:
- (a) replacement of the Goods or the supply of equivalent goods;
  - (b) repair of the Goods;
  - (c) payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (d) payment of the cost of having the Goods repaired.
- 10.3 If the Buyer makes a claim against ETEL which includes a cause of action other than for a breach of a Consumer Guarantee or the warranty in clause 7.1 then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee or the warranty in clause 7.1 and to the extent permitted by law, ETEL expressly excludes all liability in respect of the Goods supplied by ETEL to the Buyer.
- 11 PERSONAL PROPERTY SECURITIES ACT**
- 11.1 Words and expressions used in this clause which are not defined in these Terms but are defined in the PPSA have the meaning given to them in the PPSA.
- 11.2 Unless the Buyer has paid for Goods before they are delivered to the Buyer, each Buyer:
- (a) acknowledges that the Contract for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Buyer grants ETEL a security interest in the Goods and over any amount owed to the Buyer in respect of the Goods ("**Account**") to secure all monies owing by the Buyer to ETEL from time to time;
  - (b) acknowledges that where ETEL has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply;
  - (c) acknowledges that ETEL is not obliged to act in any way to dispose of or to retain any Goods which have been seized by ETEL or any person nominated by ETEL under its rights under the PPSA;
  - (d) must not remove any serial number or other identification number from the Goods that identifies the Goods as ETEL's property;
  - (e) must store the Goods separately from all other goods of the Buyer or any third party;
  - (f) must maintain the Goods in good working condition and repair;
  - (g) must keep full and complete records of the Goods;
  - (h) must return the Goods if requested to do so by ETEL following non-payment of any amount due to ETEL, or non-fulfilment of any other obligation of the Buyer, under these Terms, the relevant Contract, or any other agreement, without prejudice to ETEL's right and remedies;
  - (i) must keep the Goods free and clear of all liens, claims, taxes, duties, charges, pledges, encumbrances, or adverse claims of any nature; and
  - (j) must not register or allow any person to register a financing change statement or a change demand in respect of the Goods without ETEL's prior written consent.
- 11.3 Without limiting anything else in these Terms, the Buyer consents to ETEL effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by a Contract or these Terms, including in relation to the Goods and any Account. The Buyer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, ETEL's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 11.4 The Buyer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by ETEL for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Buyer must:
- (a) register a security interest in relation to the Goods where the Buyer on sells the Goods to a third party or incorporates the Goods into another good or product;
  - (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Buyer's favour and to perfect and protect them, with the highest priority reasonably available; and
  - (c) not register a financing change statement in relation to any registration made under paragraphs (a) or (b) without ETEL's prior written consent.

- 11.5 The Buyer must indemnify, and on demand reimburse, ETEL for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of ETEL's security interests.
- 11.6 The Buyer must not change its name, address or contact details without providing prior written notice to ETEL.
- 11.7 To the extent that the PPSA permits, the Buyer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 11.8 The Buyer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if ETEL has given prior written consent.

**12 INDEMNITY**

- 12.1 The Buyer indemnifies ETEL and holds ETEL harmless from and against all loss, liability, cost, expense, damage, charge, penalty, outgoing or payment which ETEL incurs as a direct or indirect result of:
  - (a) recovering any amounts the Buyer owes to ETEL (including any fees paid to a debt collector, mercantile agent or similar); or
  - (b) any breach of these Terms or the Contract by the Buyer.

**13 NOTICES**

- 13.1 If ETEL is required to or may give notice to the Buyer under these Terms, it may send that notice to an address the Buyer provides in the Purchase Order (including the Buyer's email address) or any other address that the Buyer provide to ETEL from time to time.
- 13.2 If the Buyer is required to or may give notice to ETEL, it must send that notice:
  - By post to: ETEL Transformers Pty Limited  
21 Healey Road  
Dandenong South, Victoria 3174
  - By email to: etel@eteltransformers.com.au
- 13.3 For the purposes of these Terms, notices given by ETEL in accordance with clause 13.1 or by the Buyer in accordance with clause 13.2 will be deemed to have been received:
  - (a) if sent by post, on the second Business Day after the date posted;
  - (b) if sent by email, at the time of transmission by the sender unless the sender was put on notice that the transmission was not successful, but if the time and day on which a notice would be deemed to have been received in accordance with the above is not between 9.00am and 5.00pm on a Business Day, the notice will be deemed to have been received at 9.00am on the next Business Day.

**14 GENERAL**

- 14.1 These Terms are governed by the laws in force in Victoria.
- 14.2 The parties submit to the nonexclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with these Terms, a Contract or the Goods.
- 14.3 The Buyer may not assign any of its rights or benefits under these Terms, in respect of the Goods, or under a Contract without ETEL's prior written consent.
- 14.4 The United Nations Convention on Contracts for the International Sale of Goods (1980) ("**Vienna Convention**") and any act or regulations enacting the Vienna Convention will not apply to these Terms or Goods supplied by ETEL pursuant to these Terms and are excluded.
- 14.5 The Buyer must not assign or otherwise deal with any of its rights or obligations under these Terms without ETEL's prior written consent. ETEL may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of ETEL acting reasonably, the assignment will not adversely affect the rights of the Buyer.
- 14.6 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these

Terms without affecting the validity or enforceability of the remaining provisions.

**15 INTERPRETATION**

- 15.1 In these Terms, unless the context otherwise requires:
  - "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation;
  - "Business Day" means a day, other than a Saturday, a Sunday or a public holiday, on which registered banks are generally open for over the counter business in Melbourne, Victoria;
  - "Buyer" has the meaning given to it in clause 1.1;
  - "Consumer" has the meaning provided to it in section 3 of the Australian Consumer Law;
  - "Consumer Guarantee" means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.
  - "Contract" has the meaning given to it in clause 1.4(c);
  - "Defect" means any failure of the Goods (or a component of them) to meet the warranties given by ETEL under clause 7;
  - "ETEL" means ETEL Transformers PTY Limited, its successors and assigns;
  - "Goods" means electrical distribution transformers or related products, parts and materials supplied or to be supplied by ETEL to the Buyer including all products, parts and materials referred to in any invoice issued by ETEL at any time and from time to time and includes services wherever appropriate;
  - "PPSA" means the *Personal Property Securities Act 2009* (Cth) and where the context requires includes any regulations made under that Act;
  - "Purchase Order" means an order for Goods submitted by the Buyer to ETEL from time to time;
  - "Security Interest" has the same meaning given that meaning under the PPSA; and
- 15.2 In interpreting these Terms, the following rules must be applied unless the context otherwise requires:
  - (a) headings to clauses are for reference only and are not an aid to interpretations;
  - (b) references to statutory provisions are to be construed as references to those provisions as they may be amended or re-enacted from time to time;
  - (c) references to clauses are references to clauses of these Terms;
  - (d) words importing the plural include the singular and vice-versa; and
  - (e) the word 'includes' is not a form of limitation.

**GUARANTEE AND INDEMNITY**

IN CONSIDERATION of ETEL Transformers PTY Limited ("ETEL") supplying and continuing to supply goods to \_\_\_\_\_  
 ("the Buyer")

I/WE JOINTLY AND SEVERALLY:

1. **GUARANTEE** the payment on demand to ETEL of all moneys now owing to ETEL by the Buyer and all further sums of money from time to time owing to ETEL by the Buyer in respect of goods and services supplied or to be supplied by ETEL to the Buyer or any other liability of the Buyer to ETEL.
2. **HOLD HARMLESS AND INDEMNIFY** ETEL on demand, as a separate obligation, against any liability (including but not limited to damages, costs, losses, debt collection and legal fees) incurred by or assessed against ETEL in connection with:
  - the supply of goods or services to the Buyer; or
  - the recovery of money owing to ETEL by the Buyer including the enforcement of this guarantee; or
  - money paid by ETEL with the Buyer's consent in settlement of a dispute that arises or results from a dispute between, ETEL, the Buyer, and a third party, or any combination thereof, over the supply of goods or services by ETEL to the Buyer.
3. **ACKNOWLEDGE** this Guarantee and Indemnity:
  - (a) shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect and not be satisfied or discharged by the Buyer's account at any time or times coming into nil or credit balance until the whole of moneys owing to ETEL by the Buyer and all obligations herein have been fully paid, satisfied and performed and ETEL has agreed in writing to release you from this document;
  - (b) shall bind me/us and my/our personal representatives as a principal debtor and liable to ETEL accordingly without affecting the Buyer's obligations to ETEL;
  - (c) is in addition to and not in substitution for any other guarantee or security or other rights which ETEL may presently have or may subsequently acquire and this Guarantee may be enforced without having recourse to any such guarantees, securities or rights and without making demand or taking proceedings against the Buyer.
4. **FURTHER ACKNOWLEDGE** that the liability under this Guarantee and Indemnity of any guarantor shall not be impaired, released, prejudiced or limited by:
  - (a) ETEL's day to day operation of the Buyer's credit account (including termination of supply), granting of credit, extension of further credit, granting of time, waiver, indulgence, neglect to sue or release from partial or total liability, or any other thing whereby the guarantor(s) would have been released had the guarantor(s) been merely a surety, on ETEL's part whether in respect of the Buyer or any one or more of any other guarantor(s) or otherwise;
- (b) a failure by any named guarantor to properly execute this deed; and/or
- (c) any assignment or transfer of this Guarantee and Indemnity or the terms of any agreement between the Buyer and ETEL.
5. Agree that as security for the amount owing to us (by the Buyer or by you as guarantor) from time to time, in consideration of, amongst other things, the forbearance to sue immediately for any debt, you hereby agree to grant a registered mortgage over all present and after-acquired land in New Zealand in which you have an interest in on the most current Auckland District Law Society all moneys, memorandum of mortgage (as updated from time to time) and acknowledge that we may lodge a caveat over all such land pending registration of the mortgage.
6. Grant an irrevocable power of attorney to us to execute such documents as may be required to perfect and register this interest and agree to provide such assistance as may reasonably be required by us.
7. Understand that where I am/we are an individual, that this information is being collected in accordance with the Privacy Act 1993 and that I/we have rights of access to and correction of personal information held by ETEL. I/We agree and authorise ETEL to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of its business activities including but not limited to:
  - considering my/our credit worthiness and the operation of the account by ETEL;
  - assisting ETEL to meet my/our credit obligations including tracing my/our whereabouts;
  - notifying other credit providers, reporters or debt collection agencies of any information relating to the subsequent operation of this account including any default by me/us; and marketing of future goods and services.
8. Expressly acknowledge that the terms of this agreement and ETEL's terms and conditions of supply to the Buyer have been read, understood and accepted without reservation.
9. Unless otherwise expressly agreed in writing by ETEL, these terms and conditions express the entire understanding and agreement between me/us and ETEL; and
10. Before you sign the Personal Guarantee ETEL suggests you seek independent legal advice. We acknowledge that ETEL have advised me/us to seek independent legal advice in respect of my/our obligations under this Personal Guarantee & Indemnity and have given me/us the opportunity to do so. I/We have either done so or elected not to before signing the Personal Guarantee.

**BY SIGNING THIS APPLICATION, YOU ARE ALSO PERSONALLY GUARANTEEING THE APPLICANT'S OBLIGATIONS WITH ETEL. YOU SHOULD READ YOUR PERSONAL OBLIGATIONS UNDER OUR TERMS OF TRADE AND SEEK INDEPENDENT LEGAL ADVICE.**

	<b>GUARANTOR 1</b>	<b>GUARANTOR 2</b>
Signed	_____	_____
Full name	_____	_____
Present address	_____	_____
Date of birth	_____	_____
Drivers licence number	_____	_____
	<b>WITNESS</b>	<b>WITNESS</b>
Witness signed	_____	_____
Name of witness	_____	_____
Witness present address	_____	_____
Witness Occupation	_____	_____
	<b>EXECUTED</b> as a deed this      day of                      20	<b>EXECUTED</b> as a deed this      day of                      20

NOTES:  
 (a) If the Buyer is a company ALL Directors must sign the personal guarantee.  
 (b) If the Buyer is a sole trader or partnership all owner(s)/partners should sign the personal guarantee.  
 (c) If the Buyer is a Trust, all Trustees must sign the personal guarantee.