



**Name/Address**

|                                          |            |                |       |
|------------------------------------------|------------|----------------|-------|
| Last Name                                | First Name | Middle Initial | Title |
| Company/Business Name                    |            |                |       |
| Business Address (do not enter a PO Box) |            |                |       |
| City                                     | State      | Postcode       |       |

**Company Information**

|                                                                                                                                                                                                                                                   |                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Type of Business                                                                                                                                                                                                                                  | In Business Since |
| Legal Form of Business<br>Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Gov't/Stat Authority <input type="checkbox"/> Other <input type="checkbox"/><br>If Other, please Specify |                   |
| Ultimate Holding Company                                                                                                                                                                                                                          |                   |
| ACN/ABN                                                                                                                                                                                                                                           |                   |
| Postal Address (if different from above)                                                                                                                                                                                                          |                   |
| City                                                                                                                                                                                                                                              | State Postcode    |
| E-mail business                                                                                                                                                                                                                                   |                   |
| E-mail accounts (if different from business e-mail)                                                                                                                                                                                               |                   |
| Website                                                                                                                                                                                                                                           | Telephone Fax     |

**Officers Information**

|                  |                     |               |
|------------------|---------------------|---------------|
| Name of Director | Residential Address | Date of Birth |
| Name of Director | Residential Address | Date of Birth |
| Name of Director | Residential Address | Date of Birth |

**Request/References**

|                                 |                           |
|---------------------------------|---------------------------|
| Amount of Credit requested \$   | Expected Monthly Spend \$ |
| Name of Credit Reference        | Telephone                 |
| Contact Person Monthly Spend \$ | E-mail                    |
| Name of Credit Reference        | Telephone                 |
| Contact Person Monthly Spend \$ | E-mail                    |
| Name of Credit Reference        | Telephone                 |
| Contact Person Monthly Spend \$ | E-mail                    |

**\*\* Please attach a copy of your last financial report**

**Office Use**

|                                                |                                                   |
|------------------------------------------------|---------------------------------------------------|
| Sales Representative                           | Branch Manager                                    |
| Credit Limit Approved \$                       | Terms Approved                                    |
| Signed T&C's attached <input type="checkbox"/> | Signed Gurantee attached <input type="checkbox"/> |

## TERMS AND CONDITIONS OF SALE

1. **Interpretation:** **%Customer+** means the individual or entity purchasing Products under these Terms; **%GST+** means goods and services tax and has the same meaning as in the GST Act; **%GST Act+** is a reference to *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any replacement or other relevant legislation and regulations; **%Insolvency Event+** means circumstances in which the Customer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (i) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Seller; (ii) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (iii) seeks protection or is granted protection from its creditors, under any applicable legislation; **%Products+** means the goods supplied by the Seller under these Terms; **%BPSA Law+** means *Personal Properties Securities Act 2009* (Cth) (**PPS Act**) and regulations made under the PPS Act as amended from time to time and any amendment made to any other legislation as a consequence of the PPS Act; **%Purchase Order+** means a written order for Products placed by the Customer, which may be in the form of: (i) the Customer's own purchase order form; (ii) the Customer's written acceptance of the Seller's written quotation for Products; or (iii) such other form as agreed by the Seller from time to time; as specified or agreed by the Seller; **%Seller+** means United Fasteners NSW Pty Limited; **%Seller Group+** means the group of companies that are Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) of United Fasteners Australia Pty Limited; and **%Terms+** means these terms and conditions of sale, as may be amended from time to time by the Seller.
2. **General:** These Terms apply to, and are incorporated into any Purchase Order, between the Customer and the Seller, to the exclusion of the Customer's conditions of purchase or any other document or terms. These Terms do not apply to any arrangements pursuant to which the Customer takes Products on a consignment basis from the Seller or a member of the Seller Group. A separate consignment agreement will be entered into in such cases.
3. **Supply:** Seller agrees to supply to the Customer and the Customer agrees to purchase from the Seller the Products in accordance with these Terms.
4. **Purchase Orders:** To obtain supply of the Products, the Customer must issue a Purchase Order to the Seller. The Purchase Order must specify the quantity and nature of the Products required by the Customer, and the requested delivery date and address. The Purchase Order must also set out any required specification for the Products if the Products are not in the Seller's then current Product range. Seller may, in its absolute discretion, accept or reject a Purchase Order. A Purchase Order is not binding until it is accepted by the Seller. A Purchase Order will only be amended or cancelled with the written consent of the Seller, such amendment or cancellation to be on such terms as the Seller may specify in its discretion, including that fees may apply. Nothing in these Terms constitutes a representation by the Seller to the Customer that it has an ongoing obligation to supply Products to the Customer for a specific period of time or on an ongoing basis.
5. **Delivery:** Seller will use reasonable commercial efforts to deliver the Products to the delivery address on the date specified in the Purchase Order. Prices for the Products are exclusive of delivery charges. The delivery charge for the Products will be quoted to the Customer prior to acceptance of a Purchase Order by the Seller. Unless otherwise agreed in the Purchase Order, the Products will be transported using the Seller's preferred carriers or agents. Any delivery date specified or given by the Seller is an estimate only and Seller will not be liable for penalties or damages (direct or indirect) or compensation for late delivery. Delayed delivery will not entitle the Customer to cancel a Purchase Order.
6. **Loss or damage during transit:** The Seller will bear the loss or damage to Products in transit where delivery is by the Seller's nominated carrier. In all other cases, the Customer is responsible for loss or damage occurring in transit. Delivery occurs:
  - (a) where Seller's nominated carrier is used, when Seller's nominated carrier delivers the Products to the nominated delivery address; and
  - (b) in all other cases, when the Products leave the Seller's premises.
7. **Risk and title:**
  - (a) Products supplied by the Seller to the Customer are at the Customer's risk immediately on delivery to the Customer or into the Customer's custody (whichever is the sooner). The Customer must insure the Products at its cost from the time of delivery of the Products until they are paid for in full against such risks as it thinks appropriate and must note the interest of the Seller on the policy.
  - (b) Title to the Products does not pass to the Customer until the money owing for those Products has been paid (whether or not the Products are delivered at different times, are the subject of separate invoices or, after delivery, may be determined by the Seller to be the subject of a specific invoice).
  - (c) Until the Customer has paid all amounts referred to in condition 7(b), the Customer: (i) must properly store, protect and insure the Products; (ii) must properly segregate the Products in such manner as to clearly indicate that they are the property of the Seller; (iii) must not sell the Products or use the Products in a manufacturing process of its own or a third party, other than, in each case, in the ordinary course of its business (and must cease to do those things if it suffers an Insolvency Event) in which case the Customer grants to the Seller a *security interest* in either every payment to the Seller for the Products or the portion of every payment for the manufactured product that relates to the Product (both as *proceeds* of the Products and as *original collateral*); and (ii) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Seller as a result of the use, manufacture or resale of the Products.

- (d) The Customer acknowledges and agrees that the Seller may recover the price of the Products by legal action if the Products are not paid for by the relevant due date, notwithstanding that property in the Products has not passed to the Customer.
- (e) While the Seller retains title to the Products, the Customer agrees that it receives all proceeds from any sale or other dealing with those Products, whether tangible or intangible, direct or indirect (including any proceeds from insurance claims) (**Proceeds**) on trust for the Seller and must keep those Proceeds separately from its other property (including, on request by Seller, in a separate bank account and otherwise on terms specified by the Seller).
- (f) The Seller may apply amounts received from the Customer towards payment of amounts due from the Customer in any order the Seller sees fit.
- (g) The Customer irrevocably authorises the Seller at any time, to enter any premises upon which the Products are stored to enable the Seller to inspect the Products and, if the Customer has breached these Terms or suffers an Insolvency Event, to reclaim possession of the Products. The Customer indemnifies the Seller against any liability to any person in connection with the entry or reclamation.
- (h) This condition 7(h) applies if, at any time, Seller retains legal title or ownership in the products. The Customer acknowledges and agrees that: (i) the Seller is a *secured party* in relation to the Products and any *proceeds* of the Products, and is entitled to register its interest on the *register* established under the PPSA Law as a *security interest* or a *purchase money security interest*, at the discretion of the Seller; (ii) the Seller may, by notice to the Customer, require the Customer to take all steps that the Seller considers necessary or desirable to ensure its *security interest* in the products is enforceable, and to perfect, or better secure the position of the Seller under these Terms as a first ranking security; (iii) the Customer must comply with a notice from the Seller under this condition at the cost and expense of the Customer; (iv) the Customer must promptly inform the Seller of any change to information that it provides to the Seller under this condition 7(h); and (v) the Seller is not obliged to give any notice or provide copies of any documents under the PPSA Law (including notice of a verification statement) unless the notice is required by law and cannot be excluded. The Seller retains any rights of enforcement arising under the PPSA Law, under these Terms or otherwise, including but not limited to a right to seize collateral under section 123 of the PPSA Law.
- (i) A term that is in italics in this condition 7(h) has the same meaning as in the PPSA Law.
8. **Prices:** Unless a price is agreed in a Purchase Order accepted by the Seller, the prices for the supply of the Products are as set out in the Seller's price list, as varied by the Seller from time to time by notice to the Customer effective from the date of the notice. The prices are exclusive of GST and other taxes, duties and other such levies which will be payable by the Customer.
9. **Invoicing and payment:**
- (a) Seller will provide an invoice to the Customer in respect of each delivery of the Products. The Customer must pay the amount of all invoices in full, without set off, within 30 days from the date of the invoice. Time is of the essence in respect of the Customer's obligation to pay for Products sold by the Seller to the Customer.
- (b) If payment is not made when due, Seller may, without limiting its rights: (i) vary or withdraw any credit at its discretion; (ii) withhold further supply until it receives full payment of all amounts due from the Customer to the Seller (whether in connection with a supply under these Terms or pursuant to any other contract between the Seller and the Customer); (iii) charge interest at the Seller's banker's current bank overdraft rate plus 2% pa on all overdue monies calculated on a daily basis from the due date until payment in full; (iv) require immediate payment in full of all amounts payable to the Seller; and (v) require the Customer to reimburse the Seller for all collection costs including legal costs incurred by the Seller in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.
- (c) The Seller reserves the right to offset any amount due by the Customer against any amount payable by the Seller to the Customer.
10. **Returns and Claims:** Any claims that the Products are not in accordance with these Terms or a Purchase Order must be submitted to the Seller (with particulars) within 7 days of delivery. If the Customer fails to give that notice, then to the extent permitted by law, the Products must be treated as having been accepted by the Customer and the Customer must pay for the Products in accordance with these Terms. Products approved for return by the Seller must be returned in an undamaged, good and saleable condition. Claims for non-delivery must be made to the Seller within 14 days from the date of invoice. If the Seller authorises the return of undamaged Products, the Customer must pay the Seller a restocking fee of 15% of the invoiced cost of the returned Products. To the extent permitted by law, any Products manufactured or purchased by the Seller exclusively for the Customer may not be returned to the Seller.
11. **Special Orders:** Despite any other condition of these Terms, where the Seller has specially ordered or manufactured a Product outside of the Seller's standard range of Products (**Special Order Products**) in order to satisfy Purchase Orders placed by the Customer (and to be placed in the future), the Customer must: (i) give the Seller monthly forecasts for its requirements of the Special Order Products so that the Seller has a rolling 3 month forecast for the Customer's requirements of the Special Order Products; (ii) give the Seller reasonable notice of its intention to cease placing further Purchase Orders for the Special Order Products (**Notice**); and (iii) place a Purchase Order for and purchase from the Seller the balance of the Seller's stock of the Special Order Products in the Seller's possession within 14 days of the Notice (provided that the Seller's stock of the Special Order Products does not exceed the quantity of Special Order Stock detailed in the Customer's forecasts for the relevant period). The purchaser acknowledges that due to the special nature of these goods, they cannot typically be returned for credit.

12. **GST:**

- (a) In this condition 11, words or expressions which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.
- (b) Unless GST is expressly included, the consideration to be paid or provided under any other condition of these Terms for any supply made under or in connection with these Terms does not include GST.
- (c) To the extent that any supply made under or in connection with these Terms is a taxable supply, the GST exclusive consideration 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 as the GST exclusive consideration is to be paid or provided.
- (d) 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.
- (e) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable.

13. **Intellectual Property ownership:** Neither the Seller or the Customer transfers any right, title or interest in the existing intellectual property rights of the respective party to the other under these Terms. If the Seller supplies Products to the Customer according to the Customer's specifications, all intellectual property rights in the Products and the specifications will be and will remain the property of the Customer. The Customer must licence the Seller to use the intellectual property in such specifications to the extent necessary for the Seller to supply the Products under these Terms. The Seller will own the intellectual property rights in any developments that it makes to the Customer's intellectual property in connection with the supply of the Products pursuant to these Terms. If any new intellectual property is created by the Seller in connection with the supply of Products to the Customer, such intellectual property will be the property of the Seller.

14. **Confidential Information:** Each party acknowledges that it may acquire confidential information from the other party. The parties must treat all confidential information as confidential and must not use, exploit or disclose the confidential information to any person (except the parties' employees and then only to such extent as may be required to enable the parties to comply with the these Terms) without the prior written consent of the other party. The parties will use the confidential information only for the purpose for which it has been provided. These obligations as to confidentiality survive the expiry or termination of these Terms.

15. **Customer Acknowledgements:** The Customer acknowledges and agrees that, to the extent permitted by law: (i) if the Customer orders a Product that is not included in the Seller's standard range of Products, the Customer is responsible for providing a specification or design for the Products to the Seller; (ii) if the Customer requests that the Seller amend the design or specification of the Products or provides any input into the design of the Product, the design or specification for the Product (as amended or contributed to by the Seller) will be subject to the Customer's review and approval prior to the Seller accepting the Purchase Order for the Product; (iii) the Seller is not able to confirm whether a Product is suitable for a particular purpose; (iv) the Customer has satisfied itself that the Product is suitable for its intended purpose and that the specifications and design of the Product are appropriate and satisfactory to the Customer; and without limiting any other condition of these Terms, the Seller will not be responsible for any liability arising from the use of that Product.

16. **Exclusions and Limitations:**

- (a) The Customer represents and warrants to the Seller that the Customer is relying solely on the Customer's own expertise and judgement with respect to the design of the Products and the use of the Products.
- (b) To the extent permitted by law, the Customer acknowledges and agrees that the Seller makes no representations and gives no warranties that the Products are fit for any particular purpose. The Customer must independently assess the suitability of the Product for its needs prior to placing a Purchase Order for the Product.
- (c) The only conditions and warranties which are binding on the Seller in respect of the Products supplied by it to the Customer are those that are imposed and required to be binding by statute (including the *Competition and Consumer Act 2010 (Cth)*) and those expressly set out in these Terms. All other conditions and warranties are expressly excluded.
- (d) Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.
- (e) Subject to condition 15(b), where any terms, conditions or warranties may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Seller to the Customer is limited, at the option of Seller and completely discharged by either: (i) the supply by the Seller of equivalent Products; or (ii) the replacement by the Seller of the Products supplied to the Customer; or (iii) repairing the Products or paying the cost of having the Products repaired.
- (f) In no event will the Seller, its officers, employees or agents be liable for any loss of value, expectation, earnings, revenue, enjoyment, profit or anticipated profit, contract, goodwill or reputation, business or business opportunity or for any interruption to the Customer's business and the Customer may not claim any such losses from the Seller, even if due to the negligence of the Seller, its officers, employees or agents.

17. **Indemnity** The Customer indemnifies the Seller, regardless of any negligence on the part of the Seller, against:

- (a) all losses incurred by the Seller;
- (b) all liabilities incurred by the Seller; and

- (c) all costs actually payable by the Seller to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Seller in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appear); arising directly or indirectly as a result of or in connection with the supply of Products by the Seller to the Customer unless caused by wilful misconduct on the part of the Seller or any of its officers, employees or agents acting within the scope of their employment.  
The Customer must pay to the Seller all liabilities, costs and other expenses referred to in this condition, whether or not Seller has paid or satisfied them.
18. **Privacy:** Where Products are supplied to the Customer on credit, the Customer irrevocably authorises the Seller, its employees and agents to make such enquiries as it considers necessary to investigate the creditworthiness of the Customer (or any proprietors, directors, partners, officers, beneficiaries of associated trusts or guarantors related to the Customer) including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers (**Information Sources**) and the Customer authorises the Information Sources to disclose to the Seller all information concerning the Customer which is within their possession and which is requested by the Seller.
19. **Force Majeure Events:** Seller may suspend delivery or reduce the amount to be delivered if Seller is unable to deliver the Products by reason of circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any government, government authority or instrumentality. If the effects of the force majeure event continue for more than 30 days, Seller at its absolute discretion may terminate any Purchase Order affected by the force majeure event. The Customer will have no claim against Seller, and Seller will not be liable for any loss arising from any suspension, reduction or failure to deliver arising from the circumstances referred to in this condition or any termination pursuant to this condition 19.
20. **Default:** If an Insolvency Event occurs in relation to the Customer, or any other event occurs which gives Seller reasonable grounds for doubting the financial standing of the Customer, Seller may by notice to the Customer, at its option and without prejudice to any other right it may have, suspend or terminate these Terms and any Purchase Orders placed under these Terms or require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted Purchase Orders, and may retain any monies paid by the Customer in relation to a Purchase Order and apply such monies against any loss or damage incurred by it in relation to the default by the Customer.
21. **Governing Law:** The law of New South Wales governs these Terms. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.
22. **Waiver:** The Seller's acceptance of payment, or delay or failure to act will not prejudice its rights or constitute a waiver.
23. **Assignment:** The Customer's rights arising out of or under these Terms may only be assigned with the prior written consent of Seller.
24. **Amendment:** These Terms may be varied by the Seller at any time. Changes to the Terms will be published on the Seller's website. The revised Terms will take effect 30 days after the date of publication. All Purchase Orders placed after the expiry of the 30 day notice period will be subject to the revised Terms. .
25. **Vienna Sales Convention:** The application of the *Sale of Goods (Vienna Convention) Act 1986 (NSW)* is excluded.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signed By: \_\_\_\_\_ Witness: \_\_\_\_\_

Position Held: \_\_\_\_\_ Print Name: \_\_\_\_\_



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## Guarantee

### Customer

Registered Company Name: \_\_\_\_\_

ACN/ABN: \_\_\_\_\_

**In consideration of** United Fasteners NSW Pty Limited granting the customer named above credit in accordance with the terms and conditions of the business

**I/We** (also referred to as the guarantors(s))

1. **Guarantee** the due and punctual payment to United Fasteners NSW Pty Limited of all monies which are due now and may become due from time to time by the customer under the credit facility.
2. **Indemnify** United Fasteners against any losses, charges and expenses which United Fasteners might incur as a result of and default by the customer under the credit facility or the enforcement of this guarantee, including but not limited to the costs of collection, interest and legal costs.

**I/We further agree and acknowledge that:**

3. The Terms and Conditions of Credit are attached to the United Fasteners Application form, available for download at [www.unitedfasteners.com.au](http://www.unitedfasteners.com.au)
4. The obligations under this Guarantee are continuing and will not be affected by United Fasteners granting any extension, waiver or indulgence to the Customer or any variation to the facility, the Customer becoming subject to external administration or the refusal by United Fasteners to supply further credit to the Customer.
5. If there is more than one Guarantor, that the terms of this Guarantee are binding on all Guarantors Jointly and severally.
6. United Fasteners may exercise rights under the Guarantee without first having exercised or exhausted all its legal rights against the Customer or any other Guarantor.
7. United Fasteners may obtain information about me/us from any credit reporting agency or credit provider for credit reference purposes and may disclose information about me/us and this Guarantee to a reporting agency.
8. That you have been afforded a reasonable amount of time to seek independent legal advice on the binding nature of this guarantee and acknowledge its enforceability.

Signed By: \_\_\_\_\_ Witness: \_\_\_\_\_

Guarantor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signed By: \_\_\_\_\_ Witness: \_\_\_\_\_

Guarantor Name: \_\_\_\_\_ Date: \_\_\_\_\_