



**Marshall Power Australia Limited**  
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## COMMERCIAL TRADING ACCOUNT

### APPLICATIONS TO BE COMPLETED IN FULL

**Date:** \_\_\_\_\_ **Rep No.:** \_\_\_\_\_ **Customer number:** \_\_\_\_\_

**Registered Name:** \_\_\_\_\_

**Trading Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Postcode:** \_\_\_\_\_

**Postal Address:** \_\_\_\_\_ **Postcode:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Mobile:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Accounts Contact:** \_\_\_\_\_ **Nature of Business:** \_\_\_\_\_

**ABN:** \_\_\_\_\_ **ACN:** \_\_\_\_\_

**Registration Date of Business:** \_\_\_\_\_ **Credit Limit:** \_\_\_\_\_

#### Business Structure

**Private Company**                      **Partnership**                      **Sole Proprietor**                      **Trustee Company**

**Public Company**                      **Government Authority**                      **Others:** \_\_\_\_\_

#### Details of Directors/Partners/Proprietors

<b>Name (1)</b>	<b>Name (2)</b>
<b>Address (1)</b>	<b>Address (2)</b>
<b>Home Phone (1)</b>	<b>Home Phone (2)</b>
<b>Date of Birth( 1)</b>	<b>Date of Birth (2)</b>
<b>Drivers License (1)</b>	<b>Drivers License (2)</b>
<b>How long have you lived at this address (1)</b>	<b>(2)</b>
_____ years    _____ months	_____ years    _____ months

If you have lived at this address for less than five (5) years, please supply previous address

**Previous address: (1)** \_\_\_\_\_ **Previous address: (2)** \_\_\_\_\_

#### GUARANTEE

I/We the undersigned Company Director(s)/Partner(s)/Proprietor(s), their executors, administrators, transferees or successors, in acceptance of MARSHALL POWER AUSTRALIA PTY LTD (ABN 64 158 526 848) granting credit and providing goods, HEREBY JOINTLY AND SEVERALLY guarantee to Marshall Power Australia Pty Ltd the payment of all debts. AND IT IS AGREED that this guarantee is irrevocable and shall be a continuing guarantee. I/We further state that I/We are fully aware of the terms and conditions under which the account, if approved, is issued and guarantee that the account shall be operated in accordance with these terms and conditions.

..... <b>Director Name &amp; Signature</b>  <b>Date:</b> .....	..... <b>Director Name &amp; Signature</b>  <b>Date:</b> .....
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## ACKNOWLEDGMENTS

The Applicant(s) is/are above the age of 18 years. The Applicant has read and understood and been advised to obtain and have had the opportunity to obtain legal advice in relation to this account application and the Suppliers standard Terms and Conditions of Trade, which forms part of this account application (copy contained herein).

The Applicant agrees that if the Application is approved that the Applicant will abide by the Suppliers Terms and Conditions of Trade which may be varied from time to time by the Supplier giving the Applicant written notice of the Suppliers amended Terms and Conditions of Trade. Unless the Applicant notifies the Supplier in writing within seven (7) days that it does not agree to the amended terms then the Applicant will be bound by any such amendments.

The Applicant warrants the above information is true and correct and that he/she has the authority to agree to these Terms and Conditions.

The Applicant is aware, that the Suppliers Privacy Policy is available on request. It includes a Statement of Information about credit reporting under clause 4.1 of the Privacy (Credit Reporting) Code 2014 ("the Code"), including the names and contact details of the Credit Reporting Bodies (CRB), to which it is likely to disclose credit information.

The Customer authorises the supplier to obtain from its credit reporting agencies or other credit reporting agencies or others a credit report containing personal credit information about the Customer in relation to commercial credit provided by the Vendor. The supplier may give to and seek from, all trade references or credit providers named in this Credit Application and any credit providers that may be named in a credit report issued by a credit reporting agency, information about the Customers arrangements. Obtain any information about the Customers credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

In the event that the Customer or any of its Guarantors fails to meet its payment obligations to the Vendor, the Vendor may be entitled to disclose this to a credit reporting body. If the Customer does not provide this information, the information requested in this document, the Vendor may be unable to process the Application

.....  
**Director Name & Signature**

Date:.....

.....  
**Director Name & Signature**

Date:.....

## TERMS & CONDITIONS OF SALE

### 1. Interpretation

Unless inconsistent with the context:

"**Agreement**" shall mean and include the terms and conditions herein and on the trace hereof.

"**Company**" shall mean and include Marshall Power Australia Pty Ltd (ACN: 158 526 848 ABN 64 158 526 848).

"**Customer**" means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company.

"**Goods**" means the Goods and/or services supplied by the Company pursuant to this Agreement. "GST" has the same meaning as defined in the Goods and Services Tax Act 1999 and amendments.

"**RCTI**" means a Recipient Tax Invoice which is issued by the Company for Core return by a Customer.

"**Security Agreement**", "**Security Interest**", "Purchase Money Security Interest", "PPSR Register" and "Verification Statement" have the same meaning ascribed to them in the PPSA.

### 2. Exclusion of inconsistent terms

Any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions (including any statement by the customer that the Customer's terms and conditions shall prevail) are expressly excluded.

### 3. Formation of Contract

A contract shall only be, or be deemed to have been entered into between the Company and the Customer for the sale of Goods when, upon an order having been placed with the Company for Goods, that order has been accepted by the Company either in writing or by conduct.

### 4. Prices

a. "Price" means, unless stated to the contrary, the price for which a Good (or Goods) is sold pursuant to the Terms and Conditions of Sale and is the amount payable by the Customer, inclusive of any GST payable by the Company in respect of the sale.

b. Prices are subject to change without notice. List and retail prices are recommended only.

### 5. Terms of Payment

a. The Customer must make immediate payment upon receipt of the Sales Invoice, if the Customer has an approved credit account with the Company payment by the Customer for goods and services must be paid within thirty (30) calendar days from the date of the sales invoice unless otherwise agreed in writing.

b. The Supplier may require the Customer to pay cash in full prior to delivery if in the Supplier's opinion the creditworthiness of the Customer becomes unsatisfactory.

c. Agreed discounts, rebates and allowances to which the Customer is entitled are credited to the Customer by the Supplier. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from moneys owing by it to the Supplier.

d. If the Customer fails to comply with these Terms and Conditions or fails to pay any money when due or suffers an insolvency event or makes any misrepresentation to the Supplier the balance of the Customer's account to the Supplier becomes due and payable immediately.

e. A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing unless manifest error can be shown.

### 6. Overdue Accounts

a. Time for payment of the amount due to the Company shall be time of the essence in this Agreement and the amount due shall include the price, any variations to the price and any additional charges which The Company is entitled to make. Any amount not paid by the due date will incur interest at a rate of 2% per month of the amount for each month or part of a month from the due date until the date of payment in full;

b. The Customer agrees to pay and reimburse the Supplier on demand for all legal costs, stamp duty or other costs or expenses suffered or incurred by the Supplier in respect of the preparation of any agreements, personal guarantees, securities or other documentation required by the Supplier or to document or secure the provision of credit to the Customer together with all collection and enforcement costs and expenses which the Supplier may suffer or incur in connection with the sale of goods or supply of services or provisions of credit to the Customer (without limitation) legal costs on a full indemnity basis.

### 7. Retention of Title

a. Property and title to the products supplied to the Customer does not pass to the Customer but is retained by the Company until the purchase price of the products and any other money owes at any time on any account has been received in full.

b. In the event of liquidation, Receivership, Administration or Bankruptcy, the Company reserve the right to claim retention of title over all products supplied to the Customer for accounts which have become due and payable but remains outstanding.

c. The Customer may sell or dispose of the products supplied to it by the Company in the ordinary course of its business.

d. Risk in all products supplied to the Customer by the Company will pass to the Customer upon delivery. The Customer will be responsible for any loss or damage to any products supplied however caused following delivery of those products.

e. Where the Customer processes or commingles the products supplied to it by the Company, the Company takes title to the other property as well.

f. Where the Customer disposes of the products supplied to it by the Company before payment of the purchase price, the sale proceeds of such disposal are the property of the Company and the Customer agrees to hold the proceeds on trust for the Company. Further, the Customer, in disposing of the products before payment to the Company, does so as the Company's fiduciary agent.

g. The Customer irrevocably grants the Company the right without notice, and at its sole discretion, to enter upon any premises the Customer in possession of, to remove or reposes any products supplied to it by the Company and sell or dispose of those products and apply the proceeds from such sale or disposal to any monies owed. The Customer agrees that the Company will not be liable for any loss, damages or claims which results from the Customer's actions in accordance with this paragraph.

### 8. Personal Property Securities Act 2009 ("PPSA")

"Upon assenting to these terms in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purpose of the PPSA and a security interest is taken in all Goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties relationship.

The Customer agrees to sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register and will indemnify, and upon demand reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register or releasing any Goods charged thereby and not register a financing change statement or a changed demand without the prior written consent of the Company.

To give the Company within 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, or business practice) and immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

The Company and the Customer agree that nothing in the sections 130 and 132 of the PPSA shall apply to these terms and conditions. The Customer waives its rights as a debtor under sections 92, 94, 95, 97, 134, 135, 137, 142, 143 and 157 of the PPSA.

Unless otherwise agreed in writing by the Company the Customer waives its right to receive a verification statement in accordance with section 158 of the PPSA.

### 9. Returns

a. The Company reserves the right in its complete discretion to refuse to accept any returns whatsoever.

b. If the Company for any reason elects to take back any of the Goods, such return shall be on terms as the Company is willing to accept and a re-stocking fee of not less than 10.00% of the invoice value (inclusive of GST) shall apply.

c. Goods returned shall be at the Customer's expense.

d. Goods returned must have been purchased from the Company, in a saleable condition and accompanied by the relevant invoice number.

e. No credit will be issued for Goods returned after seven (7) days from receipt or for Goods supplied specially to the Customer's requirements.f. The Customer shall be deemed to have been given notice under section 15 of this agreement of any change to the Company's returns policy.

### 10. Limitation of Liability under Australian Consumer Law Guarantees

a. To the extent that goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of Section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a Consumer Guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following: a.) Replacement of the goods or the supply of equivalent goods; b.) the repair of the goods; c.) the payment of the cost of replacing the goods or of acquiring equivalent goods; or d.) equivalent goods; or e.) the payment of the cost of having the goods repaired.

### 11. Changes to the Particulars of Proprietors or the Business

a. The Customer hereby undertakes to advise the Company within 7 days by certified mail of any actual or proposed change in:-

(i) the address of the business and the address at which the Goods will be located (if it differs to the business address);

(ii) the trading name of the business;

(iii) the person(s), the Directors, the Trustee or the partnership conducting the business;

(iv) the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company.

b. The Customer further accepts and agrees that where such a change occurs the Company will require that a new application for credit facilities will be sought and considered and the Customer will sign all documents and do all acts and things appropriate to such new application for credit facilities.

### 12. Governing Law

The contract between the Company and the Customer shall be governed and construed according to the laws of New South Wales and the Customer agrees to submit to a jurisdiction of the courts located in the capital City of Sydney.

### 13. Termination

The Company retains the right to revoke the account if in its discretion, believe that the terms and condition of this agreement has been breached.

Upon termination, all amounts under the account become immediately due and payable and the Company may retake possession of all products that have been supplied which are in the Customer's possession and remains outstanding..

### 14. Notices

All notices between the Company and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post, facsimile or e-mail to the last known address of the Company or the Customer, whichever may apply. Notices shall be deemed to have been delivered three (3) days after mailing; and in the case of facsimile or email upon completion of the transmission. The Customer hereby charges all of his/her or its property both real and personal with the amount of any indebtedness to the Company and such charge is separate and distinct from the reservation of title to the Goods referred to above.