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CODE

CREDIT AGREEMENT AND APPLICATION FORM

This Credit Application is submitted pursuant to the standard terms and conditions of BMX International Pty Ltd

1. CUSTOMER NAME

LEGAL ENTITY NAME BUYING GOODS:

2. ENTITY TYPE

IS THE CUSTOMER A SOLE TRADER? NO or YES
SPECIFY ABN:

OR

IS THE CUSTOMER A COMPANY (NOT A TRUSTEE OF A TRUST)? NO or YES
SPECIFY ACN:
SPECIFY ABN:

OR

DOES THE CUSTOMER OPERATE THE BUSINESS USING A TRUST? NO or YES
SPECIFY TRUST NAME:

DOES THE TRUST HAVE AN ABN? NO or YES
SPECIFY ABN:

DOES THE TRUST HAVE A COMPANY AS THE TRUSTEE? NO or YES
SPECIFY COMPANY NAME:
SPECIFY ACN:
SPECIFY ABN:

OR

DOES THE CUSTOMER OPERATE IN A PARTNERSHIP? NO or YES
SPECIFY PARTNERS, INCLUDING FULL LEGAL DESCRIPTION, ACNS, ABNS:

3. TRADING NAME

DOES THE CUSTOMER HAVE A TRADING NAME? NO or YES
SPECIFY TRADING NAME:

4. CUSTOMER CONTACT DETAILS

ENTITY NAME FOR INVOICING:	
POSTAL ADDRESS:	
DELIVERY ADDRESS:	
PHONE #:	FAX #:
MOBILE #:	A/HOURS #:
HEAD OFFICE (IF MORE THAN ONE SHOP):	
CONTACT NAME AT SHOP:	
GENERAL E-MAIL ADDRESS:	
SALES CONTACT NAME:	
SALES E-MAIL ADDRESS:	
ACCOUNTS CONTACT NAME:	
ACCOUNTS E-MAIL ADDRESS:	

5. TRADE REFERENCES

NAME:	ADDRESS:	PHONE:
1.		
2.		
3.		

6. OWNERS, PARTNERS & DIRECTORS

Full Names, Private Address, Telephone & Driver's License Numbers , Date of Birth of Owners, Partners or Directors

Name 1.	D/L#:
Address:	PH#:
	DOB:
Name 2.	D/L#:
Address:	PH#:
	DOB:
Name 3.	D/L#:
Address:	PH#:
	DOB:

Have you / the partners / directors of the Customer ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act 1966 or entered into a personal insolvency agreement under Part X of the Bankruptcy Act 1966, or has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever had an external administrator appointed? **NO or YES**

If YES, PROVIDE DETAILS:

PLEASE REFER TO ENCLOSED INSTRUCTIONS AND READ AND SIGN THE OTHER SECTIONS CONTAINED IN THIS DOCUMENT:

- **SECTION 7. TERMS & CONDITIONS AND**
- **SECTION 8. DEED OF GUARANTEE AND INDEMNITY**

THEN ENSURE THAT ALL PAGES ARE RETURNED TO BMX INTERNATIONAL PTY LTD.

7. TERMS AND CONDITIONS

1. APPLICATION

- 1.1 The following terms and conditions (**Terms**) apply to all contracts, dealings, arrangements and communications between BMX International Pty Ltd (**BMX**) and the customer submitting an order for goods to BMX (**Customer**).
- 1.2 The Customer may submit an application for credit to BMX (**Credit Application**) in which case, if accepted, all contracts, dealings, arrangements and communications under the Credit Application will be governed by these Terms. For the avoidance of doubt, the Customer is the legal entity ordering goods. The Customer will be responsible for any orders submitted bearing a trading name owned by the Customer.

2. ORDERS

- 2.1 The Customer may submit an order for goods (**Order**) to BMX.
- 2.2 The Customer acknowledges that BMX may accept Orders at its discretion.
- 2.3 Only written acceptance by BMX (which acceptance can be by issuing a tax invoice) of the Customer's Order will complete a contract.
- 2.4 If an Order is accepted, BMX agrees to provide the goods specified in the Order.

3. CANCELLATIONS & RETURNS

- 3.1 The Customer may not cancel Orders after the Order has been accepted by BMX and a tax invoice has been raised and sent to the Customer, unless BMX agrees otherwise in writing, in its absolute discretion.
- 3.2 Once an Order has been accepted by BMX the Customer must pay for such goods in accordance with these Terms. To the extent permitted by law:
- (a) if BMX elects to take back a good, it must be in new and saleable condition and upon terms agreed;
 - (b) custom made or custom processed goods or goods acquired by BMX specifically for the Customer will not be returnable;
 - (c) any goods which are accepted by BMX as defective may be returned and will be replaced in accordance with clause 6.3.
- 3.3 To the extent permitted by law, upon the agreement of a return in accordance with clause 3.2 of these Terms, the Customer will be entitled to:
- (a) a refund of the invoiced price for the accepted good, if returned within 14 days of the due date for payment of the invoice;
 - (b) a refund of 92.5% of the invoiced price for the accepted good, if returned between 15 and 30 days of the due date for payment of the invoice; and
 - (c) a refund of 85% of the invoiced price for the accepted good, if returned between 31 days and 44 days of the due date for payment of the invoice.
- 3.4 The Customer agrees that, unless BMX otherwise determines in writing, it will not be entitled to a refund if seeking a refund more than 45 days from the invoice date and that this is a reasonable period of time in which to return the goods.

4. LIMITATION OF LIABILITY

- 4.1 BMX will not be responsible for loss caused to the Customer or delays in performing its obligations due to causes beyond BMX's control, including but not limited to strikes, lockouts, fires, riots, war, embargoes, civil commotions, or acts of God.
- 4.2 BMX will not be responsible for transport, insurance, packing, storage, handling, demurrage or other charges. If any charges are included in the price of the goods, the Customer must pay any increase in charges after the date that the relevant Order is accepted by BMX, though BMX will use reasonable endeavours to contact the Customer before incurring the higher charges.
- 4.3 BMX will not be liable to the Customer or any third parties for any prospective profits or special, indirect or consequential damages or for any expense resulting from use by the Customer or others of defective goods.
- 4.4 To the extent permitted by law, BMX excludes all liability whatsoever to the Customer or any third parties arising out of or in any way connected with the goods for any contingent, consequential, direct, indirect, special or punitive damage or losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:
- (a) any loss of income, profit or business;
 - (b) any loss in the nature of overhead costs; and
 - (c) any loss of goodwill or reputation.
- 4.5 The Customer agrees that BMX's maximum liability is the invoiced price of the goods to the Customer.
- 4.6 Any illustration, drawing or specifications supplied by BMX (**Specifications**) are drafts and approximates and are for illustration

purposes only and the Customer agrees that it has not relied upon such Specifications in any way.

- 4.7 BMX has a continuing discretion to allocate available stock of goods and gives no warranty as to certainty of supply unless expressly agreed to in writing by BMX, prior to acceptance of an Order.
- 4.8 In the event of a product recall, the Customer warrants that it will provide BMX with such assistance as BMX reasonably requires in relation to that recall.
- 4.9 The Customer agrees that:
- (a) BMX is not the manufacturer of any goods;
 - (b) goods are sold subject to any manufacturer's trading terms and conditions and are covered (if at all) by and manufacturer's warranty applicable to the goods;
 - (c) BMX is not liable to any party as a manufacturer of the goods;
 - (d) BMX will use all reasonable endeavours to assist the Customer to claim upon the actual manufacturer at the Customer's costs in all things; and
 - (e) if BMX is deemed to be the manufacturer of the goods, the Customer will fully indemnify BMX from and against any liability, loss or cost associated with or arising as a result of such deeming.

5. TAX

- 5.1 The Customer must pay all sales tax, excise and other taxes or duties which BMX may be required to pay or collect in relation to the good or their supply to the Customer. If the Customer claims an exemption from duty or tax, the customer must give appropriate exemption documents to BMX.
- 5.2 Any quoted prices provided to the Customer are exclusive of GST.
- 5.3 Any GST payable on a supply made by BMX to the Customer is to be paid by the Customer. In these Terms 'GST' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

6. WARRANTIES & INDEMNITIES

- 6.1 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law.
- 6.2 BMX gives no warranties either express or implied as to merchantability, fitness for purpose or otherwise with respect to the goods other than as required by any applicable legislation.
- 6.3 Where the Customer is a consumer for the purposes of the Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (**Australian Consumer Law**), the goods comes with guarantees that cannot be excluded. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Customer is 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.
- 6.4 For the purposes of clause 6.3 if the Customer is a consumer within the meaning of that term in the *Competition and Consumer Act 2010 (Cth)* and the Australian Consumer Law, BMX makes each guarantee required of a supplier to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the goods and the nature of the Customer.
- 6.5 To the extent permitted by law, and subject to clause 6.4, BMX's liability to the Customer, whether for a breach of these Terms or otherwise, will at the discretion of the Customer, be limited to the supply of equivalent goods or the replacement of the goods supplied to the Customer.
- 6.6 To the maximum extent permitted by law, the Customer indemnifies and agrees to hold BMX, its officers and employees (**Those Indemnified**) harmless against and from all Claims which may arise as a result of or in connection with BMX's supply of the goods, including the assembly of goods by the Customer. BMX holds the benefit of this indemnity on trust for Those Indemnified and Those Indemnified will be entitled to rely on the indemnity and have the Customer pay for all costs (including but not limited to legal costs on a solicitor and own client or indemnity basis) prior to Those Indemnified having incurred and paid such costs.
- 6.7 For the purpose of these Terms, Claims means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

7. CUSTOMER WARRANTIES

- 7.1 If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with BMX in relation to the Customer's obligations to BMX. The Customer warrants that it will immediately inform BMX if any the Customer's directors or shareholders change. In the case of a change of directors, BMX may ask for new directors to sign a guarantee and indemnity.

7. TERMS AND CONDITIONS

- 7.2 If the Customer is the trustee of a trust (whether disclosed to BMX or not), the Customer warrants to BMX that:
- the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - the Customer has the right to be indemnified out of trust assets;
 - the Customer has the power under the trust deed to sign these Terms; and
 - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising BMX.
- 7.3 The Customer must give BMX a copy of the trust deed upon request.
- 7.4 If the Customer enters into these Terms on behalf of a partnership, the Customer warrants that all of the partners have signed these Terms and that all of the partners will enter into a guarantee and indemnity with BMX in relation to the Customer's obligations to BMX. If the Customer is a partnership, the Customer must not alter its partnership (for example, addition or removing partners or altering its partnership agreement) without advising BMX. In the case of a change of partners, BMX may ask for new partners to sign a guarantee and indemnity.
- 7.5 If the Customer changes its name or trading name, the Customer must inform BMX immediately.
- 7.6 The Customer warrants that any unassembled goods supplied by BMX to the Customer will be assembled in the presence of the Customer and not on-sold by the Customer before being assembled in accordance with the manufacturer's instructions.
- ### 8. PAYMENT
- 8.1 The Customer must pay for all goods within 30 days of the end of the month in which the tax invoice is raised (or such other period as nominated by BMX).
- 8.2 Payment not received when due will incur interest charges on the unpaid amount at the rate of 15% per annum, calculated on a monthly basis, until received by BMX in full.
- 8.3 Without limiting any other rights available to BMX, if BMX does not receive payment by the due date or the Customer fails to comply with any other obligation in these Terms:
- the balance of any money owing by the Customer to BMX shall immediately become due and payable without demand;
 - BMX may suspend credit extended to the Customer; and
 - BMX may withhold the delivery of goods already ordered.
- 8.4 If BMX does not receive payment by the due date or the Customer fails to comply with any other obligation in these Terms, the Customer will be liable for all costs and expenses suffered or incurred by BMX, which will be recoverable from the Customer as a liquidated debt, including but not limited to:
- legal costs (on a full indemnity basis);
 - mercantile agents fees; and
 - any other costs and expenses incurred by BMX in exercising or attempting to exercise its legal rights against the Customer.
- 8.5 All payments required to be made by the Customer under these Terms will be made free of any set-off, or counterclaim and without deduction or withholding.
- 8.6 Notwithstanding clause 8.5, BMX may, in its sole discretion, deduct or set off any amount due to BMX by the Customer from time to time from any monies which may become payable to the Customer by BMX.
- ### 9. DELIVERY
- 9.1 To the extent permissible by law, BMX accepts no responsibility for delivery but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things.
- 9.2 BMX reserves the right to charge for any delivery.
- 9.3 The Customer will be deemed to have accepted delivery and liability for the goods upon collection of the goods from BMX, or when the goods are delivered to a Customer's business premises or site whether attended or not.
- 9.4 Once the Customer has been invoiced or otherwise notified that goods are ready for collection, the Customer agrees to pay all costs of holding or handling goods.
- ### 10. RISK AND OWNERSHIP
- 10.1 Property in and title to goods will remain with BMX until the later of:
- in respect of goods listed on an invoice given to the Customer, payment for those goods has been received by BMX in full; and
 - in respect of all other goods supplied by BMX to the Customer, payment has been received by BMX in full; and
 - any moneys owing to BMX by the Customer has been paid by the Customer and received by BMX in full (the "Debts").
- 10.2 Until payment of the Debts has been received by BMX:
- The Customer agrees that property and title in the goods will not pass to the Customer and BMX retains legal and equitable title in those goods supplied and not yet sold;
 - The Customer has the right to resell goods, but only as trustee, fiduciary, agent and bailee for BMX by way of bona fide sale at full market value and in the ordinary course of its business;
 - The Customer's indebtedness to BMX, whether in full or in part, will not be discharged by the operation of clause 10.2(g) unless and until the Proceeds held on trust are remitted to and received by BMX;
 - The Customer must take custody of the goods as trustee, fiduciary, agent, and bailee for BMX;
 - The Customer must keep BMX's goods separate from any other goods, including goods supplied on a separate invoice, and properly marked, stored, protected and insured.
 - The Customer must at its expense store the goods in such a manner as to clearly show that they are the property of and were supplied by BMX, including to enable BMX to identify its goods against a specific invoice.
 - The Customer must hold all of the money it receives ("Proceeds"):
 - from the sale of any property into which goods supplied by BMX have been incorporated;
 - for the sale of goods or provision of services including the goods and services supplied by BMX;as bailee, fiduciary, agent and trustee for BMX, but the Customer need not hold on trust any money exceeding the amount of the Debts at the time the money is received. Receipt by the Customer of payment shall be treated as conclusive evidence that it has received Proceeds.
- 10.3 The goods will be entirely at the risk of the Customer after despatch to the Customer or the Customer's agent or the carrier nominated by the Customer.
- 10.4 The Customer expressly acknowledges that it is bound by fiduciary obligations created in clauses 10.2(a)-(f) and acknowledges that:
- it must hold the Proceeds on trust for BMX;
 - it must place the whole of the Proceeds in an account separate from its own moneys;
 - it must maintain the separate account at all times;
 - it must maintain proper records for the Proceeds and be able to account for the Proceeds at all times;
 - it must not assign or encumber any book debts arising from sales or do any other acts in derogation of BMX's legal or beneficial interests;
 - it must account to BMX on demand for all moneys standing to the credit of the separate account;
 - BMX may appropriate payments as it thinks fit, notwithstanding any contrary appropriation by the Customer;
 - for the purposes of identification of different consignments of goods purchased from BMX and receipt of Proceeds, the Customer agrees that the principle of "First In, First Out" shall be applied to any items that cannot be distinguished; and
- 10.5 All money owing by the Customer to BMX shall be immediately due and payable to BMX if:
- any information supplied by the Customer in applying for credit is incorrect or misleading;
 - there is a material adverse change in the financial position or credit worthiness of the Customer or of any Guarantor;
 - any judgment, execution or other process of any Court is issued against or levied upon the Customer or any Guarantor and that judgment, execution or other process is not dismissed, or withdrawn within 7 days from the date of the judgment, or issue or levy of the execution or other process;
 - any controller, voluntary administrator, provisional liquidator, liquidator, external administrator or trustee in bankruptcy is appointed to the Customer or to any Guarantor (as detailed in the deed poll of guarantee and indemnity attached to these Terms); or
 - any application is made to the Court for an order that the Customer or any Guarantor be made bankrupt or be wound up.
- 10.6 The Customer irrevocably grants to BMX, its agents and servants, an unrestricted right and licence, without notice, to enter the premises occupied by the Customer to identify and remove any of the goods which are the property of BMX at its option without in anyway being liable to the Customer or any persons claiming through them. BMX has the right to sell or dispose of any goods so removed or otherwise in its sole discretion and will not be responsible for any loss caused by it. The Customer is liable for the payment of all costs and expenses of repossession and sale including legal costs on a full indemnity basis. BMX is only obliged to apply the proceeds actually received by BMX from the sale of the goods towards the payment of money owing by the Customer to BMX.

7. TERMS AND CONDITIONS

10.7 BMX may at any time, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract connected with the goods and the bailment referred to in these Terms, and enter upon any premises owned or occupied by the Customer where BMX reasonably believes the goods may be stored, repossess the goods without liability for any damage caused, and subsequently dispose of the goods at BMX's discretion if:

- (a) The Debts are not paid in accordance with these Terms and any other contract or arrangement between BMX and the Customer;
- (b) BMX receives notice of or reasonably believes that:
 - (i) the Customer may be insolvent (within the meaning of the *Corporations Act 2001* (Cth)); or
 - (ii) the Customer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- (c) If after repossession under this clause 10.7 BMX sells the goods, BMX will account to the Customer for any excess of the proceeds of sale (less expenses of repossession and sale) over the costs of the goods.
- (d) If any goods belonging to BMX are disposed of by the Customer or an insurance claim is made in respect of them, BMX shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by the Customer in a separate bank account on trust for BMX.

10.8 Notwithstanding clause 10.2, the Customer may, as BMX's fiduciary, incorporate the goods into another product of the Customer before payment in full has been made for the goods provided that the title and property in the resulting product becomes and remains the property of BMX until payment of the Debts is received by BMX, in accordance with clause 10.1.

10.9 If the Customer has failed to pay two or more invoices by the due date in any six month period, the Customer must, upon request by BMX:

- (a) provide a list of the BMX-supplied stock still held by the Customer (both paid for and not paid for);
- (b) enter into a written agreement with BMX (such as by way of a credit note) to return BMX-supplied goods in lieu of payment;
- (c) send back any agreed BMX-supplied stock held by the Customer back to BMX at the Customer's expense.

10.10 Following the process described in clause 10.9, BMX will then determine the current saleable value of goods returned and provide a corresponding credit note or set-off of the value of the returned goods against the Debts.

10.11 For the avoidance of doubt, BMX's interest in the goods constitutes a Purchase Money Security Interest (as defined in section 14 of the *Personal Property Security Act 2009* (Cth) and its regulations (PPSA)).

11. SECURITY

11.1 To secure the Customer's performance of its obligations and payment of the Debts, the Customer hereby charges all of the Customer's right, title and interest in any property presently owned by the Customer and that which the Customer may hereafter acquire (**Charge**). The Customer agrees upon request by BMX, to deliver to BMX an executed mortgage over any property subject to the Charge (**Property**) or instrument of encumbrance in registrable form that incorporates BMX's standard covenants as prepared by BMX's solicitors, and as BMX may require to be executed by the Customer. In the event that the Customer should neglect or fail to deliver the requested instrument or security, the Customer hereby irrevocably appoints BMX and any solicitor nominated by BMX severally to be the Customer's lawful attorney to execute, obtain and/or register a mortgage or caveat, withdrawal of caveat or other security to support the Charge in respect of the Property. If the Charge created by this clause is or becomes void or unenforceable, it may be severed from these Terms and conditions without any effect on their validity and the Customer will not be exonerated from complying with these Terms in whole or in part. Nor will BMX's rights, remedies or recourse against the Customer in any way be prejudiced or adversely affected by such severance.

12. PPSA

12.1 All terms defined in the PPSA have the same meaning where capitalized in these Terms.

12.2 The Customer agrees and acknowledges that:

- (a) The Charge constitutes a Security Interest insofar as it relates to the Customer's presently owned and after acquired personal property, which may be registered by BMX on the Register.
- (b) These Terms constitute a Security Agreement for the purposes of the PPSA and that a Security Interest exists in all goods previously

supplied by BMX to the Customer which have not yet been paid for, and their proceeds (if any); and in all future goods that may be supplied by BMX (and their proceeds) pursuant to these Terms, to the extent that they are not paid for by the Customer, and in all products into which the goods are incorporated, processed or commingled (and their proceeds);

- (c) The Customer contracts out of and waives its rights under the following provisions of the PPSA, to the extent permitted, sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, 143 and the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded;
- (d) Until BMX receives payment for the Debts, the Customer must not give BMX a written demand or allow any other person to give BMX a written demand requiring BMX to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- (e) It has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the Security Interest granted to BMX under these Terms;
- (f) The Customer irrevocably grants to BMX the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if BMX has cause to exercise any of BMX's rights under sections 123 or 128 of the PPSA, and the Customer agrees to indemnify BMX from any claims made by any third party as a result of BMX exercising such right;
- (g) Pursuant to section 275(6) of the PPSA, the Customer agrees it will not disclose to an interested person any of the matters described in section 275(1) of the PPSA without prior written approval of BMX; and
- (h) if the Customer defaults in the performance of any obligation owed to BMX, BMX may enforce its Security Interest in any goods by exercising all or any of its right under these Terms, or the PPSA.

12.3 The Customer agrees that where BMX has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

13. COSTS

13.1 The Customer must pay for its own legal, accounting and business costs and all costs incurred by BMX relating to any default by the Customer.

13.2 The Customer will pay BMX's costs and disbursements incurred in pursuing any recovery action, or any other Claim or remedy, against the Customer, including collection costs, debt recover fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to BMX irrespective of whether pursuit of the recovery action, Claim or remedy is successful.

13.3 The Customer acknowledges and agrees that payments by the Customer will be applied by BMX as follows:

- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 10.7 and 12.2 (or as otherwise specified in these Terms);
- (b) Secondly, in payment of any interest incurred in accordance with clause 8.2; and
- (c) Thirdly, in payment of outstanding invoices.

14. CONFIDENTIAL INFORMATION

14.1 The Customer agrees that it will not without the prior written consent of BMX, either during the term of any agreement formed pursuant to these Terms or at any time thereafter (except in the proper course of its duties under these Terms or as required by law or by BMX), disclose or allow its related bodies corporate, employees, agents and contractors to disclose to any person any confidential information of or relating to BMX which comes into its possession as a result of or in relation to the supply of goods pursuant to these Terms.

14.2 Nothing in these Terms prohibits disclosure of information which:

- (a) is in the public domain;
- (b) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;
- (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this agreement; or
- (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party.

14.3 The obligations under this clause 13 survive termination of any contract formed pursuant to these Terms.

7. TERMS AND CONDITIONS

15. INTELLECTUAL PROPERTY

- 15.1 "Intellectual Property" means all intellectual property rights including but not limited to the following rights:
- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
 - (b) any application or right to apply for registration of any right referred to in sub-paragraph (a).
- 15.2 Any Intellectual Property provided by BMX to the Customer for its use relation to these Terms remains the property of BMX and all Intellectual Property (other than the Intellectual Property originally supplied by the Customer) existing in a finished good supplied to the Customer vests in the BMX.
- 15.3 The Customer must not use any Intellectual Property provided by BMX, including logos or artwork of its suppliers, or represent BMX as being affiliated with the Customer and any advertising campaigns run by the Customer, without BMX's express written consent.

16. PURPOSE FOR WHICH CREDIT IS AVAILABLE

- 16.1 Subject to clause 15.2, credit (if approved by BMX at its sole discretion) will be made available to the Customer for the purpose of the purchase of goods by the Customer from BMX under these Terms.
- 16.2 Where the Customer is a natural person, the Customer warrants and declares that the credit provided under the credit account is to be applied wholly or predominantly for business or investment purposes (or for both purposes) and not for personal, domestic or household purposes.
- 16.3 Credit facilities provided by BMX are not transferable by the Customer without the prior written consent of BMX (given at its sole discretion).

17. CREDIT TERMS

- 17.1 After receipt of a Credit Application, BMX will accept, suggest a modification or reject the Customer's requested credit limit, in its absolute discretion. The credit term will be 30 days from the end of the month in which the tax invoice is raised (or such other period as nominated by BMX). The terms of payment are as otherwise set out in these Terms.
- 17.2 Credit limits are as approved by BMX at its absolute discretion and BMX may vary the credit limits at any time for any reason. BMX reserves the right to withdraw credit at any time, whether the Customer is in default under these Terms or not.

18. PRIVACY

- 18.1 The Customer authorises BMX to give to and obtain from a credit reporting agency or credit provider personal information about the Customer. The Customer also acknowledges and accepts BMX's privacy policy.
- 18.2 BMX agrees to comply with its obligations under the *Privacy Act 1988* (Cth) as amended from time to time. Personal information provided by the Customer in relation to these Terms will be governed by BMX's Privacy Policy which can be found <http://www.bmxinternational.com.au>.

19. ACCELERATION & INSOLVENCY

- 19.1 Notwithstanding any other provision of these Terms, if any amount due and payable by the Customer under these Terms is not paid on time, all amounts actually or contingently owing under the Terms, whether or not due and payable, become immediately due and payable.
- 19.2 If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred under these Terms. The Customer remains liable under this agreement even if BMX receives a dividend or payment as a result of the Customer being insolvent.

20. BREACH

- 20.1 If the Customer:
- (a) breaches these Terms;
 - (b) makes any false representation (whether by act or omission) in respect of the Customer's application for credit, including any false representation (whether by act or omission) in relation to the Customer's financial position; or
 - (c) becomes subject to the provisions of clause 18.1, then without limiting any other rights available to BMX, BMX may:
 - (d) terminate any agreement under these Terms with the Customer;
 - (e) refuse to supply any goods to the Customer; and
 - (f) repossess and deal with any goods held by the Customer in accordance with these Terms.

21. INCONSISTENCY

- 21.1 Any inconsistent terms specified on an Order or in a Credit Application will not be binding on BMX. These Terms may not be varied except in writing signed by BMX's properly authorised representative. The

Customer agrees that these Terms may be varied, added to, or amended by an authorised officer of BMX at any time by written notice to the Customer. The Customer agrees that any proposed variation to these Terms or the Credit Application must be requested in writing. BMX may refuse any such request without providing reasons either orally or in writing. Any placement of an Order or submission of a Credit Application after the provision of written notice of variation to the Customer will be deemed acceptance of the varied Terms.

22. GENERAL

- 22.1 All rights and remedies of BMX under these Terms are in addition to BMX's other rights and remedies and are cumulative not alternative. Where there is more than one Customer, each Customer is jointly and severally liable to BMX.
- 22.2 The Customer acknowledges that these Terms are the only terms governing the supply of goods by BMX to the Customer, unless expressly stated otherwise by BMX.
- 22.3 The Customer undertakes to comply with any request by BMX to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
- 22.4 The Customer agrees that it has read and agreed to these Terms and warrants that all information provided by the Customer to BMX is true, complete and correct.
- 22.5 These Terms will be governed by the law in force in the State of Queensland, and the Customer irrevocably submits to the exclusive jurisdiction of the Courts of that State.
- 22.6 BMX is entitled to apply or appropriate any money received at any time by BMX from or on behalf of the Customer towards the satisfaction of any liability or obligation of the Customer on any account including appropriating any payment or part thereof between accounts and/or to a more recent liability instead of an older liability of the Customer and/or applying any payment or part of it first in satisfaction of any liability or obligation of the Customer not covered by these Terms.
- 22.7 BMX is, without further authority or notice to the Customer, irrevocably entitled at any time to combine, consolidate or merge all or any part of the Customer's accounts or agreements of whatsoever nature with BMX so as to set off a credit balance of one account against a debit balance of another account, and notwithstanding the terms and conditions relating to the accounts or agreements, or the absence of any mutual credit, mutual debts or other mutual dealings, between BMX and the Customer in relation to the accounts or agreements.
- 22.8 Any invoice, document, notice or Court document which BMX may wish to give to the Customer may be hand delivered, left at, mailed to or sent by facsimile or email or other electronic facility to any address, facsimile number, email address or electronic address of the Customer shown in this document or to the place of business, address for correspondence, registered office, facsimile number, email address, electronic address or residence of the Customer last known to BMX. If the Customer is more than one person, the service of a notice or demand on any one of them is deemed to be service upon all of them.
- 22.9 A notice if:
- (a) posted is deemed served three days after posting; or
 - (b) sent by electronic transmission (including but not limited to email and facsimile transmission) is deemed served upon the completion of the transmission.
- 22.10 The Customer acknowledges and represents to BMX that it has not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by BMX in relation to the goods or their use or application.
- 22.11 No right under these Terms will be deemed to be waived except by notice in writing signed by each party and such a waiver by a party will not prejudice its rights in respect of any subsequent breach of these Terms by the other party. Any failure by a party to enforce any clause of the Terms, or any forbearance, delay or indulgence granted by a party to the other party, will not be construed as a waiver of that party's rights under these Terms.
- 22.12 If any provision of these Terms or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision shall so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Terms shall not in any way be affected or impaired.
- 22.13 The Customer must not disparage any of the products or brands that BMX supplies to the Customer.

7. TERMS AND CONDITIONS

Signed by the Customer in acknowledgement and acceptance of the standard terms and conditions of BMX:

Where the Customer is an individual	
SIGNED by Customer in the presence of:)
.....)
Witness Signature	Signature of Customer (individual)
.....
Name of witness	Name of Customer (individual)
.....	
Date	
OR	
Where the Customer is a sole trader	
SIGNED by Customer in the presence of:)
.....)
Witness Signature	Signature of Customer (sole trader)
.....
Name of witness	Name of sole trader (e.g. Dave Smith trading as Dave's Bikes)
.....	
Date	
OR	
Where the Customer is a Company	
SIGNED by Customer in accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by a director and a director/secretary or by a sole director (if applicable):)
)
)
)
)
	Company Name

	Company ACN
.....
Director 1	Director 2/Secretary/ Sole Director
.....
Name	Name
.....
Date	Date

7. TERMS AND CONDITIONS

OR

If the Customer is a trust with individual trustee

SIGNED by Customer as trustee in the presence) of: )	..... Signature of Customer
..... Witness Signature	..... Name of Customer
..... Name of witness	..... Name of Trust
..... Date	..... ABN of Trust

OR

If the Customer is a trust with a corporate trustee

SIGNED by Customer as corporate trustee in) accordance with section 127(1) of the <i>Corporations</i>) <i>Act 2001</i> (Cth) by a director and a director/secretary) or by a sole director (if applicable): )	..... Name of Customer
..... Name of Trust	..... ACN of Customer
..... Director Signature	..... Director/Secretary Signature
..... Name	..... Name
..... Date	..... Date

OR

If the Customer is a partner in a partnership

SIGNED by Customer as partner in the presence) of: )	..... Signature of Partner
..... Witness Signature	..... Name of Partner
..... Name of witness	..... ABN of partnership
..... Date	

8. DEED OF GUARANTEE AND INDEMNITY

To: **BMX INTERNATIONAL PTY LTD ACN 073 013 573 (BMX)**

In consideration of BMX having agreed to supply the Customer with goods, the signatories to this Guarantee and Indemnity (together called the **Guarantor**) covenant and agree with BMX as follows:

1. In this Guarantee and Indemnity, unless the contrary intention appears:
 - (a) definitions contained in the terms and conditions between BMX and the Customer have the same meaning in this Guarantee and Indemnity unless otherwise defined;
 - (b) any term defined in the PPSA has the corresponding meaning in this Guarantee and Indemnity.
 - (c) "Customer" means the entity or individual submitting an order to BMX, or the applicant named in a credit agreement and application form submitted to BMX;
 - (d) "Guaranteed Money" means any and all money owing by the Customer to BMX under the Terms and includes any and all other money payable by the Guarantor under this Guarantee and Indemnity;
 - (e) "insolvency event" includes but is not limited to an application being made to wind up the Customer or a meeting is convened for the purpose of considering a resolution for winding up or becomes bankrupt or enters into any arrangement or composition with its creditors, makes or offers to make any arrangement or composition with its creditors or if a resolution is passed to place the company into external administration (including the appointment of a controller, administrator, receiver or liquidator).
 - (f) a reference to "BMX", "Guarantor" and "Customer" includes their executors, administrators, successors and permitted assigns as the case requires;
 - (g) words denoting the singular includes the plural and vice versa;
 - (h) where there is more than one Guarantor, the liability and obligations of the guarantors are joint and several; and
2. The Guarantor unconditionally guarantees to BMX:
 - (a) the due and punctual payment by the Customer for all goods supplied by BMX to the Customer; and
 - (b) the due and punctual performance by the Customer to BMX of the Customer's obligations to pay the Guaranteed Money and all other obligations of the Customer arising under or in connection with the Terms and the provision of credit by BMX in connection with goods supplied by BMX to the Customer.
3. The Guarantor unconditionally indemnifies BMX against, and agrees to immediately pay to BMX on demand a sum equal to the amount of, any losses, liabilities, damages or expenses that BMX directly or indirectly suffers because:
 - (a) the liability to pay Guaranteed Money is unenforceable in whole or part as a result of lack of capacity, power or authority or improper exercise of power of authority;
 - (b) a liquidation or insolvency event occurs in respect of the Customer; or
 - (c) the Guaranteed Money is not or has never been recoverable from the Guarantor or from the Customer because of any other circumstance whatsoever including, without limitation, any transaction relating to the Guaranteed Money being void, voidable or unenforceable and whether or not BMX knew or should have known anything about that transaction; or
 - (d) of any failure of the Customer to make due payment of any money owing to BMX whether for goods sold or otherwise or to observe the terms of any agreement between the Customer and BMX, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or a Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by BMX to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and obtaining injunctions and enforcing any security over real and personal property given to BMX.
4. Where two or more persons execute this Guarantee and Indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and BMX will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
5. BMX will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer. Furthermore, BMX will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
6. This Guarantee and Indemnity:
 - (a) is a continuing guarantee and indemnity which will not be considered wholly or partly satisfied or discharged by any money which may at any time or times in the future be received or applied by BMX to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for BMX, except by complete performance of all the Customer's obligations to BMX under the Terms;
 - (b) will continue in force until such time as BMX releases the Guarantors in writing, and notwithstanding the fact that Guarantors are no longer directors, shareholders or owners of the Customer;
 - (c) is a primary security and BMX may call on the Guarantor for payment under this Guarantee and Indemnity even though no demand has been made on the Customer; and
 - (d) allows BMX to proceed against the Guarantor as if the Guarantor was the party principally liable under the Terms.
7. BMX can at any time at its absolute discretion and without giving any notice to the Guarantor refuse further credit or supply of goods to the Customer.
8. BMX may assign the whole or any part of the benefit of this Guarantee and Indemnity, whether by way of security or otherwise.
9. If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Money is void or voidable under a law relating to insolvency or the protection of creditors or for any other reason and the claim is upheld, conceded or compromised, then BMX is entitled immediately as against the Guarantor to the rights in respect of the Guaranteed Money to which it would have been entitled if all or part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place.
10. As long as the Guaranteed Money remains unpaid, the Guarantor may not, without the consent of BMX:
 - (a) in reduction of the Guarantor's liability under this Guarantee and Indemnity, raise a defence, set-off or counterclaim otherwise available to the Guarantor, the Customer or a co-surety or co-indemnifier against BMX or claim a set-off or make a counterclaim against BMX;
 - (b) make a claim or enforce a right against BMX or against its estate or property;
 - (c) prove in competition with BMX if a liquidation or insolvency event occurs in respect of the Customer whether in respect of an amount paid by the Guarantor under this Guarantee and Indemnity, in respect of other amount (including the proceeds of realisation of any security) applied in reduction of the

8. DEED OF GUARANTEE AND INDEMNITY

- Guarantor's liability under this Guarantee and Indemnity, or otherwise; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee or a share in it now or subsequently held for the Guaranteed Money or other money payable under this Guarantee and Indemnity.
11. This Guarantee and Indemnity will be construed and have effect in accordance with the laws of Queensland and the Guarantor agrees to submit to the jurisdiction of the courts of Queensland.
12. The Guarantor will immediately pay to and agrees to indemnify BMX against all costs, expenses, stamp duty (if any) and disbursements incurred by BMX including, without limiting the generality of the foregoing, debt collection costs, agency fees and commissions, legal costs on an indemnity basis incurred in connection with:
- (a) the account of the Customer;
- (b) relating this Guarantee and Indemnity;
- (c) any other security in respect of the indebtedness of the Customer to BMX;
- (d) the preparation, completion and stamping of this deed; or
- (e) the exercise or attempted exercise of any right, power or remedy conferred on BMX under or by virtue of this deed;
- and the same will be part of the Guaranteed Money.
13. The Guarantor authorises BMX to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to BMX, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantor's liability under this Guarantee and Indemnity.
14. The Guarantors agree that this Guarantee and Indemnity will not be avoided, released or affected by BMX making any variation or alternation in the terms of its agreement with the Customer, even if such variation or alteration has the effect of increasing the Guarantor's liability under this Guarantee and Indemnity.
15. If any provision of this Guarantee and Indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.
16. The rights and powers of BMX under this Guarantee and Indemnity are not affected if:
- (a) BMX is negligent in exercising or not exercising any of its rights or powers;
- (b) BMX delays exercising any of its rights or powers;
- (c) BMX gives any person time to do anything which BMX requires done;
- (d) BMX compromises, waives, releases or deals with any of BMX's rights or powers against any person or property;
- (e) BMX takes any other security from the Customer or from any other person;
- (f) BMX does any other act, matter or thing which under law relating to sureties would or might but for this provision release the Guarantor or any of the Guarantors from all or any part of the Guarantors' obligations contained in this Guarantee and Indemnity; or
- (g) BMX any person named in this Guarantee and Indemnity failing to execute this Guarantee and Indemnity or failing or ceasing to be bound by the terms of this Guarantee and Indemnity.
17. No sum of money which the Customer pays to BMX and BMX later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001 (Cth)*, the *Bankruptcy Act 1966 (Cth)* or otherwise will, for the purpose of this Guarantee and Indemnity, be considered as discharging or diminishing the Guarantor's liability and this Guarantee and Indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.
18. BMX is not liable for any loss suffered by the Guarantor as a direct or indirect result of:
- (i) BMX's exercise or attempted exercise of or failure to exercise any of its rights under this Guarantee and Indemnity; or
- (j) any release or dealing with any other Security Interest including any prejudice to or loss of the Guarantor's rights of subrogation.
19. The Guarantor hereby charges all of the Guarantor's right, title and interest in any property presently owned by the Guarantor and that which the Guarantor may hereafter acquire either in its own right or as a beneficial interest (**Property**), to secure payment of the Guaranteed Money (**Charge**). The Guarantor agrees upon request by BMX, to deliver to BMX an executed mortgage over any Property or instrument of encumbrance in registrable form that incorporates BMX's standard covenants as prepared by BMX's solicitors, and as BMX may require to be executed by the Guarantor. In the event that the Guarantor should neglect or fail to deliver the requested instrument or security, the Guarantor hereby irrevocably appoints BMX and any solicitor nominated by BMX severally to be the Guarantor's lawful attorney to execute, obtain and/or register a mortgage or caveat, withdrawal of caveat or other security to support the Charge in respect of the Property. If the Charge created by this clause is or becomes void or unenforceable, it may be severed from this Guarantee and Indemnity without any effect on their validity and the Guarantor will not be exonerated from complying with this Guarantee and Indemnity in whole or in part. Nor will BMX's rights, remedies or recourse against the Guarantor in any way be prejudiced or adversely affected by such severance.
20. The Charge constitutes a Security Interest insofar as it relates to the Guarantor's personal property, which may be registered by BMX on the Register. Pursuant to section 275(6) of the PPSA, the Guarantor agrees it will not disclose to an interested person any of the matters described in section 275 (1) of the Act without prior approval of BMX. To the extent permitted by law, the Guarantor waives its rights to receive any notification under the PPSA (including a verification statement) unless the notice is required by the PPSA and cannot be excluded. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising out of this Guarantee and Indemnity and Terms, the Guarantor agrees that the sections described in sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 134(2), 135, 136(3)-(5), 137(2) and 138, 142, 143, 157(1) and 157(3) inclusive of the PPSA will not apply to the enforcement.
21. Where the Guarantor has previously entered into a deed or agreement with BMX by which the Guarantor has granted a charge, mortgage or other security over real of personal property, those charges, mortgages or other security interests will continue to co-exist with the obligations and security interests created in this deed. BMX may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms in this Guarantee and Indemnity.
22. The Guarantor authorises BMX to give to and obtain from a credit reporting agency or credit provider personal information about the Guarantor. The Guarantor also acknowledges and accepts BMX's privacy policy.
23. The Guarantor acknowledges and warrants that the Guarantor has executed this Guarantee and Indemnity voluntarily, has read it and understood its true nature and effect (including but not limited to the Terms as they apply to the Customer) and is aware of its rights to obtain independent legal and/or financial advice.
24. The Guarantor agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any court document, by prepaid post at any address nominated in this application or any other address later notified to BMX by the Guarantor or the Guarantor's authorised representative.

8. DEED OF GUARANTEE AND INDEMNITY

GUARANTOR 1

SIGNED SEALED AND DELIVERED by
Guarantor in the presence of:

)
)

.....
Witness Signature

.....
Signature of Guarantor (director of
Company or corporate trustee, or individual
trustee)

.....
Name of witness

.....
Full name of Guarantor

.....
Date

.....
Guarantor's date of birth

GUARANTOR 2

SIGNED SEALED AND DELIVERED by
Guarantor in the presence of:

)
)

.....
Witness Signature

.....
Signature of Guarantor (director of
Company or corporate trustee, or individual
trustee)

.....
Name of witness

.....
Full name of Guarantor

.....
Date

.....
Guarantor's date of birth