

managed solutions pty ltd

The K & R Harm Family Trust T/A
Managed Solutions Pty Ltd
ABN 57 504 933 566
PO Box 530
Ipswich QLD 4305
Ph (07) 3812 5001
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Application For Credit Account

Nature of Organisation:

Sole Trader Partnership Proprietary Company Trust Other _____

Trade Name: _____

Legal Name: _____

Delivery Address: _____

Postal Address: _____

Telephone: () _____ Fax: () _____ Mobile: () _____

Registered Office: _____ E-Mail: _____

ABN Number: _____ Paid up Capital: _____

Previous Address Details (if less than 2 years): _____

Details of Partners (if Partnership)

1. Full Name: _____

Home Address: _____

Home Phone: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

Details of Directors (If Proprietary Company)

1. Full Name: _____

Home Address: _____

Home Phone: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

People Authorised to Charge to this Account: _____

Contact Person for Accounts: _____

Name and Branch of Bank: _____

Bank Account Number: _____

Solicitors Name and Address: _____

Accountants Name and Address: _____

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. _____ Phone No: _____

2. _____ Phone No: _____

3. _____ Phone No: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf) of The K & R Harm Family Trust T/A Managed Solutions Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

Signed: _____ Date: _____
(Proprietor / Partner / Director / Authorised Signatory) Circle One

Full Name: _____ Position: _____

Guarantors Details (if required):

Full Name: _____ Occupation: _____

Address: _____ Signature: _____

The K & R Harm Family Trust T/A Managed Solutions Pty Ltd – Terms & Conditions of Trade

1. Definitions
1.1 "Managed Solutions" shall mean The K & R Harm Family Trust T/A Managed Solutions Pty Ltd and its successors and assigns.
1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
1.4 "Goods" shall mean Goods supplied by Managed Solutions to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
1.5 "Services" shall mean all services supplied by Managed Solutions to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
1.6 "Price" shall mean the cost of the Goods as agreed between Managed Solutions and the Client subject to clause 4 of this contract.

2. Acceptance
2.1 Any instructions received by Managed Solutions from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Managed Solutions shall constitute acceptance of the terms and conditions contained herein.
2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of Managed Solutions.
2.4 None of Managed Solutions agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Managed Solutions in writing nor is Managed Solutions bound by any such unauthorised statements.
2.5 The Client undertakes to give Managed Solutions not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).
2.6 These terms and conditions are to be read in conjunction with the Terms and Conditions posted on the Service Provider's web site. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3. Goods
3.1 The Goods are as described on the invoices, quotation, work order or any other work commencement forms as provided by Managed Solutions to the Client.

4. Price And Payment
4.1 At Managed Solutions sole discretion;
(a) The Price shall be as indicated on invoices provided by Managed Solutions to the Client in respect of Goods supplied; or
(b) The Price of the Goods shall (subject to clause 4.2) be Managed Solutions quoted Price which shall be binding upon Managed Solutions provided that the Client shall accept in writing Managed Solutions quotation within fourteen (14) days.
4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of Managed Solutions quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
4.4 At Managed Solutions sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.
4.5 Payment will be made by cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and Managed Solutions.
4.6 At Managed Solutions sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.
4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by Managed Solutions.

5. Delivery Of Goods / Services
5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at Managed Solutions address.
5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of Managed Solutions for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
5.3 Managed Solutions may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
5.4 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
(a) such discrepancy in quantity shall not exceed 5%, and
(b) the Price shall be adjusted pro rata to the discrepancy.
5.5 The failure of Managed Solutions to deliver shall not entitle either party to treat this contract as repudiated.
5.6 Managed Solutions shall not be liable for any loss or damage whatever due to failure by Managed Solutions to deliver the Goods (or any of them) promptly or at all.

6. Risk
6.1 If Managed Solutions retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, Managed Solutions is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by Managed Solutions is sufficient evidence of Managed Solutions rights to receive the insurance proceeds without the need for any person dealing with Managed Solutions to make further enquiries.

7. Client's Disclaimer
7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of Managed Solutions and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that Managed Solutions shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.

8. Defect/Returns
8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify Managed Solutions in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Managed Solutions an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
8.2 For defective Goods, which Managed Solutions has agreed in writing that the Client is entitled to reject, Managed Solutions liability is limited to either (at Managed Solutions discretion) replacing the Goods or repairing the Goods provided that:
(a) the Client has complied with the provisions of clause 8.1;
(b) Managed Solutions will not be liable for Goods which have not been stored or used in a proper manner;
(c) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

9. Warranty
9.1 Subject to the conditions of warranty set out in Clause 9.2 Managed Solutions warrants that if any defect in any workmanship manufactured by Managed Solutions becomes apparent then Managed Solutions will (at Managed Solutions sole discretion) within a time frame as specified in writing by Management Solutions, repair the defect or replace the workmanship.
9.2 The conditions applicable to the warranty given by Clause 9.1 are:
(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
i) Failure on the part of the Client to properly maintain any Goods; or
ii) Failure on the part of the Client to follow any instructions or guidelines provided by Managed Solutions; or
iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
v) Fair wear and tear, any accident or act of God.
(b) The warranty shall cease and Managed Solutions shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Managed Solutions consent.

9.3 For Goods not manufactured by Managed Solutions the warranty shall be the current warranty provided by the manufacturer of the Goods. Managed Solutions shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.

9.4 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Managed Solutions as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Managed Solutions shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts
10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Intellectual Property
11.1 Where Managed Solutions has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in Managed Solutions, and shall only be used by the Client at Managed Solutions discretion.
11.2 Conversely, in such a situation, where the Client has supplied drawings, Managed Solutions in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall be between the parties to be the property of Managed Solutions).
11.3 Where any designs or specifications have been supplied by the Client for manufacture, by or to the order of Managed Solutions then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

12. Default & Consequences Of Default
12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Managed Solutions from and against all Managed Solutions costs and disbursements including on a solicitor and own client basis and in addition all of Managed Solutions nominees costs of collection.

12.3 Without prejudice to any other remedies Managed Solutions may have, if at any time the Client is in breach of any obligation (including those relating to payment), Managed Solutions may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Managed Solutions will not be liable to the Client for any loss or damage the Client suffers because Managed Solutions exercised its rights under this clause.
12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
12.5 In the event that:
(a) any money payable to Managed Solutions becomes overdue, or in Managed Solutions opinion the Client will be unable to meet its payments as they fall due; or
(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
then without prejudice to Managed Solutions other remedies at law
12.6 Managed Solutions shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
12.7 all amounts owing to Managed Solutions shall, whether or not due for payment, immediately become payable.

13. Title
13.1 It is the intention of Managed Solutions and agreed by the Client that property in the Goods shall not pass until:
(a) The Client has paid all amounts owing for the particular Goods, and
(b) The Client has met all other obligations due by the Client to Managed Solutions in respect of all contracts between Managed Solutions and the Client, and that the Goods shall be kept separate until Managed Solutions shall have received payment and all other obligations of the Client are met.
13.2 It is further agreed that:
(a) Until such time as ownership of the Goods shall pass from Managed Solutions to the Client Managed Solutions may give notice in writing to the Client to return the Goods or any of them to Managed Solutions. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
(b) If the Client fails to return the Goods to Managed Solutions then Managed Solutions or Managed Solutions agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
(c) The Client is only a bailee of the Goods and until such time as Managed Solutions has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for Managed Solutions.
(d) The Client shall not deal with the money of Managed Solutions in any way which may be adverse to Managed Solutions.
(e) Receipt by Managed Solutions of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Managed Solutions ownership of rights in respect of the Goods shall continue.
(f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Managed Solutions.
(g) Managed Solutions may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to Managed Solutions arising out of these terms and conditions, and Managed Solutions may take any lawful steps to require payment of the amounts due and the Price.
(h) Managed Solutions can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
(i) Until such time the Client has Managed Solutions authority to convert the goods into other products and if the goods are so converted, the parties agree that Managed Solutions will be the owner of the end products.

14. Security And Charge
14.1 Notwithstanding anything to the contrary contained herein or any other rights which Managed Solutions may have howsoever:
(a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Managed Solutions or Managed Solutions nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Managed Solutions (or Managed Solutions nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
(b) Should Managed Solutions elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Managed Solutions from and against all Managed Solutions costs and disbursements including legal costs on a solicitor and own client basis.
(c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint Managed Solutions or Managed Solutions nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as Managed Solutions and/or Managed Solutions nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of Managed Solutions and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to Managed Solutions and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in Managed Solutions absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Cancellation
15.1 Managed Solutions may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. Managed Solutions shall not be liable for any loss or damage whatever arising from such cancellation.
15.2 At Managed Solutions sole discretion the Client may cancel delivery of Goods and/or Services. In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any costs incurred by Managed Solutions up to the time of cancellation.

16. Privacy Act 1988
16.1 The Client and/or the Guarantor/s agree with Managed Solutions to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Managed Solutions.
16.2 The Client and/or the Guarantor/s agree that Managed Solutions may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
(a) To assess an application by Client;
(b) To notify other credit providers of a default by the Client;
(c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
(d) To assess the credit worthiness of Client and/or Guarantor/s.
16.3 The Client consents to Managed Solutions being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

16.4 The Client agrees that Personal Data provided may be used and retained by Managed Solutions for the following purposes and for other purposes as shall be agreed between the Client and Managed Solutions or required by law from time to time:
(a) provision of Services & Goods;
(b) marketing of Services and/or Goods by Managed Solutions, its agents or distributors in relation to the Services and Goods;
(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
16.5 Managed Solutions may give, information about the Client to a credit reporting agency for the following purposes:
(a) to obtain a consumer credit report about the Client; and
(b) or allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

17. Unpaid Managed Solutions Rights To Dispose Of Goods
17.1 In the event that:
(a) Managed Solutions retains possession or control of the Goods; and
(b) payment of the Price is due to Managed Solutions; and
(c) Managed Solutions has made demand in writing of the Client for payment of the Price in terms of this contract; and
(d) Managed Solutions has not received the Price of the Goods,
then, whether the property in the Goods has passed to the Client or has remained with Managed Solutions, Managed Solutions may dispose of the Goods and may claim from the Client the loss to Managed Solutions on such disposal.

18. Lien & Stoppage In Transit
18.1 Where Managed Solutions has not received or been tendered the whole of the price, or the payment has been dishonoured, Managed Solutions shall have:
(a) a lien on the goods;
(b) the right to retain them for the price while Managed Solutions is in possession of them;
(c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
(d) a right of resale,
(e) the foregoing right of disposal,
provided that the lien of Managed Solutions shall continue despite the commencement of proceedings or judgement for the price having been obtained.

19. General
19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
19.2 All Goods supplied by Managed Solutions are subject to the laws of Queensland and Managed Solutions takes no responsibility for changes in the law which affect the Goods supplied.
19.3 Managed Solutions shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Managed Solutions of these terms and conditions.
19.4 In the event of any breach of this contract by Managed Solutions the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Managed Solutions exceed the Price of the Services.
19.5 The Client shall not set off against the Price amounts due from Managed Solutions.
19.6 Managed Solutions may license or sub-contract all or any part of its rights and obligations without the Client's consent.
19.7 Managed Solutions reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which Managed Solutions notifies the Client of such change.
19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.