

# APPLICATION FOR COMMERCIAL CREDIT

This Account Application shall be in respect of TUBESALES (QLD) PTY. LTD. (ABN 54 057 409 195) (referred to hereafter as "Tubesales").

## APPLICANT DETAILS

Trading Name of Applicant: .....

Legal Name of Applicant: \_\_\_\_\_ A.B.N. \_\_\_\_\_ A.C.N. \_\_\_\_\_

Entity Type: Company  Trust  Partnership  Sole Trader  Other  Please specify: .....

Affiliated or parent company (if applicable) .....

If applicant is a Trust, please provide details of Trustee

Legal Name of Trustee: ..... A.B.N. \_\_\_\_\_

## BUSINESS DETAILS

Date Commenced ..... / ..... / .....

Nature of Business/Main Business Activity: ..... Number of Employees .....

Postal Address : ..... Postcode .....

Business Address: ..... Owned  Buying  Renting

..... Post Code: .....

Telephone Number ( ) ..... After Hours ( ) .....

Business Facsimile ( ) ..... Mobile phone .....

Landlord/Agent's Telephone Number ( ) ..... Name: .....

Name if less than 12 months – Previous Address ..... Post Code .....

WEB Address: ..... email address .....

Contacts - Purchasing Officer ..... Accounts Payable Officer .....

Has Applicant or any associated company or person traded with our company in the past? YES  NO

(If Yes) under what name? .....

Details of: (Please tick) Directors  Partners  Sole Trader

1. Name in Full ..... Date of Birth.....  
Position/Occupation ..... Licence No.....  
Residential Address ..... Owned  Buying  Renting   
..... Postcode.....  
Spouse's Full Name:.....

2. Name in Full ..... Date of Birth.....  
Position/Occupation ..... Licence No.....  
Residential Address ..... Owned  Buying  Renting   
..... Postcode.....  
Spouse's Full Name:.....

3. Name in Full ..... Date of Birth.....  
Position/Occupation ..... Licence No.....  
Residential Address ..... Owned  Buying  Renting   
..... Postcode.....  
Spouse's Full Name:.....

Bank..... Branch ..... Account No .....

Name/Title of Account ..... Contact Name ..... Tel No. [ ] .....

Overdraft facility details .....

Accountant/Auditor ..... Telephone Number ( ) .....

**Trade References (Major Suppliers)**

1 ..... Phone No.(.....) ..... Fax No.....

2. .... Phone No.(.....) ..... Fax No.....

3. .... Phone No.(.....) ..... Fax No.....

4. .... Phone No.(.....) ..... Fax No.....

Credit Limit Requested: \$ .....

At any time has any Proprietor, Director, or Manager of the Applicant Customer been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director or Partner of a business which has failed or was the subject of a Scheme of Arrangement, Receivership, Voluntary Administration, Liquidation or to which an Administrator or Controller has been appointed?

YES  NO

If Yes, please give details.....

The Applicant acknowledges that he/she has received a copy of the Tubesales Terms and Conditions (Issue 1.7.04) prior to his/her signing this application.

The person(s) signing this Application hereby warrants that he/she has read and fully understands the nature and effect of Tubesales Terms and Conditions and:-

- a) He/She/They have authority to sign on behalf of and to bind the Applicant;
- b) The information provided is true and correct in every detail;
- c) He/She/They agree(s) to provide such updated and regular financial and trading information as Tubesales may reasonably require from time to time;
- d) He/She/They irrevocably grant permission to Tubesales before, during or after the provision of credit to give and receive information about the Applicant to and from any Credit Reporting Agency, Credit Provider, Bank or Financial Institution or any other corporation, association or person in accordance with the Privacy Act, 1988 or otherwise.  
This information may concern the Applicant's Consumer Credit and/or Commercial Credit and trading arrangements, may consist of Credit Reports and other credit and trading information concerning the Applicant and its business and may be used to assess or review at any time this application or to collect any overdue payments and/or to provide credit references in accordance with the provisions of the Privacy Act, 1988 or otherwise.
- e) He/She/They hereby indemnify(ies) Tubesales in respect of any claims or actions arising out of the obtaining or providing of information concerning the Applicant.

Tubesales is committed to your privacy. Our policy on the handling of personal information is to comply with the National Privacy Principles for the fair handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles and Tubesales Privacy Policy, persons will be given access to their personal information on request. We use the types of personal information collected including considering and assessing applications for employment, enabling us to supply you with our products and/or services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, ensuring our risk in collecting debts. This information may be disclosed to our related or associated companies, parties related to your employment (e.g. referees and others as set out in our Privacy Policy) contractors, other credit providers whether or not your account is overdue and, if necessary, our Risk Insurers, debt collectors and Credit Reporting Agencies. If all or part of the information requested is not provided we may not be able to consider any application made by you or to supply you with our goods and/or services and we may not be able to process your Application for Commercial Credit. If you have any questions or concerns about our Privacy Policy, please direct your requests to the Financial Controller, Tubesales (Qld) Pty Ltd 14 Quarry road, Stapylton Qld 4207.

Signed on behalf of the Applicant by  Directors  Partners  Sole Trader

**PLEASE ENSURE ALL PAGES ARE SIGNED WHERE INDICATED**

X..... Signature ..... Print Name and Title Date: ..... / ..... / .....

X..... Signature ..... Print Name and Title Date: ..... / ..... / .....

X..... Signature ..... Print Name and Title Date: ..... / ..... / .....

X..... Signature ..... Print Name and Title Date: ..... / ..... / .....

**OFFICE USE ONLY**

**Business Manager's Comments**

General Comments: .....

.....

.....

Business Manager's Signature: ..... Date: .....

Credit Manager's Signature: ..... Date: .....

Account Recommended:  Yes  No Max. Credit \$ \_\_\_\_\_ Terms: \_\_\_\_\_ Days: \_\_\_\_\_

# DEED OF GUARANTEE, INDEMNITY AND CHARGE

TO: TUBESALES (QLD) PTY LIMITED (ABN 54 057 409 195) (hereinafter referred to as "the Company")

In consideration of the Company providing or continuing to provide Goods or supplying credit accommodation to the Customer or not commencing or continuing legal action against the Customer at the request of the Guarantor and for the business purposes of the Customer, the Guarantor enters this Deed and agrees with the Company as follows:

## Guarantee

1. To guarantee and be responsible for the payment of the Money Secured to the Company by the Customer.
2. This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to the Company for the whole of the Money Secured.
3. The Company may at any time or times at its discretion and without giving any notice whatsoever to the Guarantors refuse to provide further Goods to the Customer.
4. Where the Guarantor consists of more than one person, this Deed is enforceable against all persons signing as Guarantor and each Guarantor will be jointly and severally liable immediately on signing this Deed.
5. If it is intended that more than one person be a Guarantor, this Deed will remain enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this Deed does not in fact do so.
6. The Company may at any time release or discharge the Guarantor or any of the persons included as Guarantor from the obligations of this Deed or grant time to pay, accept a composition from or enter other arrangements with the Customer or any Guarantor without affecting the liability of any other Guarantor under this Deed except that any payment received by the Company under such composition or arrangement will operate as a discharge of liability to the extent of the payment.
7. Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and in such any event the parties are to be restored to rights which each respectively would have had if the payments had not been made.
8. Where the Guarantor has the right to prove in any insolvency administration of the Customer, the Guarantor must do so and hold any dividends received on trust for the Company.

## Indemnity

9. The Guarantor indemnifies the Company against any and all losses and expenses of any nature including the costs of preparation of this Deed, stamp duty (if any) and legal costs on a solicitor/client basis arising in any way out of its dealings with the Customer, the intent being that the Guarantor is primarily liable for payment to the Company of such losses and expenses and of the Money Secured.

## Charge

10. For the purpose of securing payment to the Company of the Money Secured, the Guarantor:
  - 10.1 Hereby charges all of its, his or her beneficial interest in real and personal property (including all property acquired after the date of this Deed) in favour of the Company whether or not a demand has been made on the Customer or the Guarantor;
  - 10.2 Agrees to deliver to the Company within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Guarantor has any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
  - 10.3 Authorises and consents to the Company taking all actions necessary to give effect to this security including the lodgment of a Caveat upon Title of the Guarantor's Real Property. The Guarantor hereby irrevocably appoints the Company and any person nominated by the Company severally the attorney of the Guarantor with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
  - 10.4 If the charge created by Clause 10.1 is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and the Guarantor shall not be exonerated in whole or in part, nor shall the Company's right, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by such severance.
11. A Certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Company shall be prima facie evidence of the amount of the Money Secured owed by the Customer or Guarantor at that time.
12. The Guarantor acknowledges that the Company has afforded him, her or it full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under the Deed prior to the signing of this Deed of Guarantee and Indemnity.
13. The Guarantor acknowledges that the Guarantor has made his, her or its own enquiries of the Customer regarding the Customer's past and prospective dealings with the Company and is satisfied as to the extent of his, her or its obligations arising from this Deed and that the Company is under no obligation to notify the Guarantor of any changes to its trading terms or dealings with the Customer even if these changes increase the Guarantor's liability under the Deed.
14. The Guarantor agrees that this Deed of Guarantee, Indemnity and Charge shall be construed according to the laws of the State or Territory as The Company may in its sole discretion determine. Proceedings by either The Company or the Guarantor may be instituted and/or continued in such State or Territory as The Company may in its sole discretion determine. Failing such determination the Guarantor consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of Victoria applying the laws of the State of Victoria.
15. He/She/They irrevocably grant permission to the Company before, during or after the provision of credit to the Customer to give and receive information about the Guarantor to and from any Credit Reporting Agency, Credit Provider, Bank or Financial Institution or any other corporation, association or person in accordance with the Privacy Act, 1988 or otherwise.

This information may concern the Guarantor's Consumer Credit and/or Commercial Credit and trading arrangements, may consist of Credit Reports and other credit and trading information concerning the Guarantor and their business and may be used to assess or review at any time this guarantee or to collect any overdue payments and/or to provide credit references in accordance with the provisions of the Privacy Act, 1988 or otherwise.

We are committed to your privacy. Our policy on the handling of personal information is to comply with the National Privacy Principles for the fair handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles and the Company's Privacy Policy, persons will be given access to their personal information on request. We use the types of personal information collected for the purpose of enabling us to supply you with our products and/or services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, ensuring our risk in collecting debts. This information may be disclosed to our related or associated companies, contractors, other credit providers whether or not your account is overdue and, if necessary, our Risk Insurers, debt collectors and Credit Reporting Agencies. If all or part of the information requested is not provided we may not be able to supply you with our goods and/or services and we may not be able to process any Application for Commercial Credit. If you have any questions or concerns about our Privacy Policy, please direct your requests to the Privacy Officer at Tubesaes Qld Pty Ltd, 14 Quarry road Stapylton Qld 4207.

**THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING  
AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**

**Definitions and Interpretations**

"Company" means TUBESALES (QLD) PTY LIMITED (ABN 54 057 409 195)

"Customer" means the person or company set out in Item 1 of the Schedule.

"Guarantor" means the person or company set out in Item 2 of the Schedule or any other person or persons signing or purporting to sign this Deed as Guarantor and that person's personal representative.

"Goods" means all goods, produce, merchandise and services supplied or which may be supplied in the future at the Customer's request or credit extended by the Company to the Customer.

"Money Secured" means all monies now payable or which may become payable in the future or contingently by the Customer to the Company for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the supply of Goods; all money the Company pays or becomes liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however directly or indirectly arising from any dealing or default by the Customer in its dealings with the Company or by the Guarantor under this Deed; all the costs incurred by the Company for recovering monies under any related security.

"Deed" means this Deed of Guarantee, Indemnity and Charge.

In interpreting this Deed words incorporating the singular number denotes the plural and vice versa; any gender denotes the relevant gender; and a person denotes an individual, a body corporate, a partnership or any unincorporated association.

*PLEASE ENSURE YOUR COMPANY SEAL DOES NOT APPEAR ON THIS DEED*

**SCHEDULE**

Item 1: The Customer

..... (ACN .....

Item 2: The Guarantor

Name ..... Address .....

Name ..... Address .....

**EXECUTED AS A DEED**

WITNESS I SET MY HAND AND SEAL AT ..... ON THIS ..... DAY OF ..... , 20 ..

SIGNED by

..... )  
..... )  
(Print Name of Guarantor) )  
..... )  
of ..... )  
..... )  
(Address of Guarantor) )

X.....  
(Signature of Guarantor)

Before .....  
(Signature of Witness)

.....  
(Print Name of Witness)

of .....  
.....  
(Address of Witness)

SIGNED by

..... )  
..... )  
(Print Name of Guarantor) )  
..... )  
of ..... )  
..... )  
(Address of Guarantor) )

X.....  
(Signature of Guarantor)

Before .....  
(Signature of Witness)

.....  
(Print Name of Witness)

of .....  
.....  
(Address of Witness)

**THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**

## TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all goods merchandise and services ("the goods") supplied by TUBESALES (QLD) PTY LIMITED (ABN 54 057 409 195) (referred to as "Tubesales ") to any person, firm or company placing an order with Tubesales for the purchase of any goods ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of Tubesales and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

### GENERAL

1. No quotation by Tubesales shall constitute an offer.
2. All orders placed with Tubesales shall only be accepted subject to these Terms and Conditions. Tubesales may at any time, and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by Tubesales to the Customer.
3. If a Customer cancels or alters any order or part order for special goods or standard goods with special materials at any time after Tubesales has received the order then Tubesales reserves the right to charge to the Customer the costs of any special goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
4. Goods and Services Tax ("GST") or any other applicable tax or duty payable shall be paid by or re-imbursed by the Customer to Tubesales on demand and the Customer shall indemnify and keep indemnified Tubesales in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the Customer.

### PRICES

5. Prices are those referred to in any invoice issued by Tubesales and/or arrangements current at the date of issue and shall be subject to change without notice.
6. Prices are quoted ex- stock from Tubesales Brisbane.

### TERMS OF PAYMENT

7. Unless otherwise stated in writing all prices are strictly nett. The granting of credit to a Customer shall be at the absolute discretion of Tubesales and unless otherwise demanded by Tubesales the Customer shall make payment of all amounts payable within thirty (30) days after the end of the month of delivery.
8. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay Tubesales Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer's account.
9. If the Customer fails to make payment in accordance with Clause 7, Tubesales shall be entitled to:-
10. Require the payment of cash upon delivery of any further goods;
11. Charge an interest charge at the rate of one point seven five percentum (1.75%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a daily basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by Tubesales. Payments received from the Customer will be

credited first against any interest charge and all such fees as shall be payable on demand;

12. Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by Tubesales to recover monies or goods due from the Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor-client basis; and
13. Cease any further deliveries to the Customer and to terminate any agreement in relation to goods that have not been delivered.
14. Customers having overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.

### DELIVERY

15. The Customer shall be responsible for the cost of any delivery made ex-Tubesales store. If Tubesales is requested to arrange for delivery of products beyond the store, the Customer shall pay the delivery charges stipulated by Tubesales from time to time. Tubesales shall in all cases be entitled to choose the method of transport.
16. Any date or time quoted for delivery is an estimate only and Tubesales shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render Tubesales liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
17. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of Tubesales or any other cause whatsoever.
18. Tubesales obligation to deliver shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, **provided that** if the Customer is unable or unwilling to accept physical delivery of the goods when the goods are ready for delivery, Tubesales shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. Tubesales may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale.

### INSPECTION

19. The Customer shall examine the goods immediately after delivery and Tubesales shall not be liable for any misdelivery, shortage, defect or damage unless Tubesales receives details in writing within seven (7) days of the date of delivery of the goods.

### PROPERTY AND RISK

20. Notwithstanding delivery of the goods or their installation, property in all and any goods shall remain with Tubesales until the Customer has paid and discharged any and all indebtedness to Tubesales on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
21. The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.
22. The Customer acknowledges that it is in possession of the goods solely as a bailee for Tubesales until payment for all and any goods as defined in clause 7 has been made in full to Tubesales and until such payment:
23. The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and
24. The Customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods, whether as separate chattels or as components, as the property of Tubesales .
25. The Customer shall maintain records of goods owned by Tubesales identifying them as Tubesales property, of the persons to whom the goods are sold or disposed to and of the payments made by such persons for such goods. The Customer shall allow Tubesales to inspect these records and the goods themselves on request.
26. The Customer hereby irrevocably grants to Tubesales, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the goods the property of Tubesales in accordance with the Terms and Conditions of Sale without in any way being liable to the Customer or any person claiming through the customer. Tubesales shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
27. Tubesales licenses the Customer to install the goods. If the goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of Tubesales until payment as defined in clause 7 has been made in full to Tubesales unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case

the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.

28. The Customer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 7, the Customer shall sell as an agent and bailee for Tubesales and that the entire proceeds from the sale thereof shall be held in a separate account on trust for Tubesales.
29. Where the Customer has not been paid for the goods sold in accordance with clause 19 the Customer hereby assigns the debt owing to itself (save for this provision) to Tubesales absolutely and Tubesales shall be entitled to demand payment of and collect the amount payable by the third party and the Customer hereby appoints Tubesales as its agent for that purpose.
30. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by Tubesales and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to Tubesales.

#### WARRANTY

31. Subject to payment in full being made as defined in clause 7, Tubesales shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of goods or parts thereof supplied to the Customer.

#### LIMITATION OF LIABILITY

32. These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.
33. Sale to Non-Consumers
34. i) In the case of goods supplied by Tubesales to a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time to time ("the Act")), if the goods do not correspond with the description of them on the invoice or are defective, then provided that the goods are preserved intact and made available for inspection by a representative of Tubesales and are returned to Tubesales in the same order and condition as that in which they were delivered, Tubesales shall at its option replace those goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within seven (7) days of the date of delivery of those goods.
35. ii) Should the Customer seek indemnity from Tubesales in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of goods by the Customer to that consumer, sub-paragraph (i)

will not apply and in respect of goods that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") Tubesales liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the goods or the cost of obtaining equivalent goods or the cost of having the goods repaired, whichever is the lesser amount.

36. Sales to Consumers:
37. In the case of goods supplied by Tubesales to a Customer who is a consumer, to the extent that the goods are not consumer goods or goods, the liability of Tubesales to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of Tubesales, to any one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods or acquiring equivalent goods or the payment of the cost of having the product repaired.
38. Except for those conditions and warranties implied by the Act or other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that:
39. It has not relied on any inducement, representation or statement made by or on behalf of Tubesales in purchasing the goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of Tubesales); and
40. This clause sets out the entire liability of Tubesales in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of goods or goods. In no circumstances will Tubesales incur any liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

#### FORCE MAJEURE

41. Tubesales shall not be liable for any failure or delay in supply or delivery of the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Tubesales including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

#### TERMINATION

42. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is

appointed, Tubesales may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any goods not paid for in accordance with these Terms and Conditions.

#### RETURNS

43. Other than in respect of Tubesales obligations pursuant to clause 23 hereof Tubesales shall not be liable to accept any returned goods but may in its absolute discretion accept the return of goods, provided that such goods shall only be accepted for return with the prior written approval of a duly authorised representative of Tubesales. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned goods. Return freight and other expenses will be paid for by the Customer and no returns of special goods will be accepted. Any returned goods must be accompanied with the relevant invoice numbers and/or a Goods Return Authority. No goods will be accepted for return after a period of 14 days from invoice date.

#### GOVERNING LAW

44. The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as Tubesales may in its sole discretion determine. Proceedings by either Tubesales or the Customer may be instituted and/or continued in such State or Territory as Tubesales may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

#### SERVICE OF DOCUMENTS

45. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

#### STATEMENT OF DEBT

46. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of Tubesales shall be prima facie evidence of the amount of indebtedness of the Customer to Tubesales at that time.

#### DEFAULT & CONSEQUENCE OF DEFAULT

47. 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.

If the customer defaults in payment of any invoice when due, the customer shall indemnify Tubesales from and against all of Tubesales costs and disbursements including on a solicitor and own client basis and in addition all of Tubesales nominees costs of collection.

Without prejudice to any other remedies Tubesales may have, if at any time the customer is in breach of any obligation (including those relating to payment), Tubesales may suspend or terminate the supply of Services to the customer and any of its other obligations under the terms and conditions. Tubesales will not be liable to the customer for any loss or damage the customer suffers because

Tubesales exercised its rights under this clause.

- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the customer.

In the event that:

- (a) any money payable to Tubesales becomes overdue, or in Tubesales opinion the customer will be unable to meet its payments as they fall due; or
- (b) the customer becomes insolvent, convenes a meeting with its creditors or proposes or 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 customer or any asset of the customer;

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Issue 31.3.06

then without prejudice to Tubesales's other remedies at law

- (a) Tubesales shall be entitled to cancel all or any part of any order of the customer which remains unperformed in addition to and without prejudice to any other remedies; and
- (b) all amounts owing to Tubesales shall, whether or not due for payment, immediately become payable.

#### PRIVACY ACT 1988

48. The customer and/or the Guarantor/s agree for Tubesales to obtain from a credit-reporting agency a credit report containing personal credit information about the customer and Guarantor/s in relation to credit provided by Tubesales.

The customer and/or the Guarantor/s agree that Tubesales may exchange 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 Tubesales;
- (b) To assess the credit worthiness of the customer and/or Guarantor/s.

The customer consents to Tubesales being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1Xh) Privacy Act 1988).

The customer agrees that Personal Data provided may be used and retained by Tubesales for the following purposes and for other purposes as shall be agreed between the customer and Tubesales or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and or Goods by Tubesales, its agents or distributors in relation to the Services and Goods;
- (c) enabling the daily operation of the customers account and/or the collection of amounts outstanding in the customers account in relation to the Services and Goods.

Tubesales may give information about the customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the customer; and or

