

ACCOUNT APPLICATION

DOCUMENT NO: SQEF6-02-TRI

REVISION: 2

ISSUE DATE: 24/10/19

YOUR COMPANY DETAILS			
<i>Please tick appropriate type:</i>		Approval No.	
<input type="checkbox"/>	Registered Trader	Account No.	
<input type="checkbox"/>	Sole Trader	Approved by:	
<input type="checkbox"/>	Partnership	Date:	
Company Name:			
ABN:			
Contact Name:		Mobile:	
Contact Email:			
Position/Title:			
Accounts Contact:		Mobile:	
Accounts Email:			
Telephone:		Fax:	
Site Address:			
State:		Postcode:	
Postal Address:			
<i>(if different to above)</i>			
State:		Postcode:	

OUR BANKING DETAILS – (EFT PAYMENT OPTION)			
Name of Account:	TriCal Australia Pty Ltd		
Name of Bank:	JP Morgan		
Address:	Level 18 85 Castlereagh Street		
	Sydney NSW 2000		
BSB No.:	212 200	Account No.:	83608782

Directors Name & Mobile:	Address:
1)	
2)	
3)	

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TRADE REFERENCES			
Name:		Telephone:	
Company:			
Name:		Telephone:	
Company:			
Name:		Telephone:	
Company:			

To: TriCal Australia Pty Ltd. A.C.N: 600 066 966 A.B.N: 31 600 066 966

The Applicant hereby applies to TriCal Australia for a credit facility.

Payment for goods delivered to be made 30 days from date of invoice or on the date agreed with the directors of TriCal Australia Pty Ltd. The Applicant acknowledges that the information provided in this Application is true and correct and that no information has been withheld.

Signed:

Position:

Date:

How did you hear about us?	
Trical Website <input type="checkbox"/>	Internet Search <input type="checkbox"/>
Other Website If so, which one? _____	Social Media (e.g. Facebook, Instagram) If so, which one? _____
Word of Mouth <input type="checkbox"/>	Email Newsletter <input type="checkbox"/>
Magazine / Advertisement If so, which one? _____	Field Day / Conference If so, which one? _____
Industry Association If so, which one? _____	Other – please specify _____

TRICAL AUSTRALIA

TERMS AND CONDITIONS OF SALE

1. General

- 1.1 These terms and conditions are deemed to be incorporated into all Supply Contracts unless otherwise agreed to in writing by Seller.
- 1.2 Any order for Goods and/or Services placed by a Buyer is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in Buyer's order or other communication with Seller unless expressly agreed to by Seller in writing.
- 1.3 A quotation by Seller is not binding until Buyer places an order based on the quotation in writing and that order is accepted by Seller. Acceptance of an order may be made by Seller taking any steps to satisfy the order.
- 1.4 Seller reserves its right to accept all or any part of an order by Buyer or to refuse any such order.
- ### 2. Description
- 2.1 The description given of the Goods and/or Services has been given by way of identification only and the use of such description does not constitute a Supply Contract a sale by description.
- ### 3. Payment
- 3.1 Terms of payment are net cash within thirty (30) days from the date of Seller's invoice for Goods and net cash within seven (7) days from the date of Seller's invoice for Services (including Cylinder Service Charge) unless otherwise specified overleaf.
- 3.2 Without prejudice to any other remedy, Seller may, by giving written notice, either terminate the Supply Contract or suspend future deliveries if Buyer fails to pay for any one delivery on due date.
- 3.3 Seller may demand cash payment or security in advance for future deliveries and for Goods and/or Services previously delivered.
- 3.4 If the Buyer defaults on any payment by failing to pay for any one delivery by the due date, then all overdue amounts due to the Seller shall become immediately due and payable. The Seller reserves the right to charge the Buyer interest on any overdue amounts at the interest rate prescribed by the *Penalty Interest Rates Act 1983* plus 2%. Interest will be calculated daily from the due date until the invoice is paid in full.
- 3.5 The Seller reserves the right to refer any overdue amount to a debt collection agency and / or lawyer for recovery. The Buyer shall be liable for all recovery costs. In the event where the Seller refers the overdue amount to a lawyer the Buyer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on an indemnity basis.
- 3.6 In the event of default on any payment, the Seller reserves the right to review the Buyer's credit account (for example, reducing the credit limit of the Buyer or removing credit consideration).
- ### 4. Delivery
- 4.1 Unless specified overleaf, Seller will deliver Goods F.I.S. to Buyer's premises stated in the order or as otherwise agreed in writing.
- 4.2 All delivery dates for Goods and/or Services quoted are estimates only and Seller is not responsible or liable, for any costs, expenses, losses or damages suffered by Buyer either directly or indirectly arising where Goods and/or Services are not delivered by that date. Buyer is not relieved of any obligation to accept or pay for Goods and/or Services by reason of any delay in delivery or dispatch.
- 4.3 Seller may deliver any order by way of instalments and each instalment shall be deemed to be sold under a separate contract. Failure of Seller to deliver an instalment shall not entitle Buyer to rescind or repudiate the contract.
- 4.4 Should Buyer request at any time Goods remain at Sellers premises when ready for delivery such storage shall be at Sellers discretion. Goods will be at Buyers risk and Buyers payment obligation for Goods will not be affected
- 4.5 Buyer must inspect and reject any Goods delivered for reasons of damage, defect or shortage within 7 days from the date of delivery. After 7 days, acceptance of the Goods is deemed to have occurred.
- 4.6 Buyer shall ensure that where Goods are delivered to or collected from Buyer's premises there is safe and proper access at the point where delivery or collection is made. Buyer accepts all responsibility for any loss or damage to vehicles or loads due to unsuitability of means of access to the loading or unloading point and Buyer indemnifies Seller for and against the cost of all

loss and damage to property and injury to persons arising directly or indirectly as a result of the failure of Buyer to ensure proper and safe access.

- 4.7 Buyer will provide adequate labour and equipment for the loading and unloading of Goods at Buyers premises.

5. Risk

- 5.1 Risk in respect of Goods, shall pass to Buyer upon delivery.

6. Price

- 6.1 Buyer must pay the Sellers price ruling at the date of delivery, notwithstanding that delivery may be delayed.
- 6.2 Buyer shall pay in accordance with condition 3 and must pay or reimburse Seller for all Goods and Services Tax and any other value added taxes, sales tax, stamp duty and other government duties, taxes and expenses or other taxes of a similar nature which Seller may be liable to pay from time to time in connection with the supply of the Goods and/or services to Buyer (except where such payment or reimbursement is expressly prohibited by statute).
- 6.3 The prices are based on the current cost to Seller of production and delivery and also the quantities ordered or to be ordered by Buyer. Subject always to contractual obligations, Seller may increase, adjust or alter the price at its sole discretion in cost to Seller resulting from increases in cost of production or delivery or occasioned by a shortfall in quantities ordered by Buyer and will be for Buyer's account. For F.O.B, C.I.F., and C.&F. sales, customs duty, excise duty and governmental imposts are not included in prices quoted, and shall accordingly be for Buyer's account. For ex-stock sales, F.I.S., and F.O.T. sales, prices quoted include customs duty, excise duty and governmental imposts other than environmental levies which shall be for Buyers account.

7. Force Majeure

- 7.1 The obligations of Seller and Buyer, other than an obligation to pay money, will be excused to the extent that either party is wholly or partially precluded from complying with its obligations by a Force Majeure Event. Seller shall be under no obligation to subsequently deliver Goods and/or Services during the period of a Force Majeure Event but otherwise these terms and conditions remain unaffected.
- 7.2 If, a Force Majeure Event occurs, Seller may allocate its available supply of Goods and/or Services, without obligation to purchase similar Goods and/or Services from other sources, among itself and all of its customers, including those not under contract, on such basis as it determines to be equitable.
- 7.3 During the period of a Force Majeure Event Buyer shall be free to purchase elsewhere at its sole risk and cost, such quantities of alternative Goods and/or Services necessary to cover the shortfall of Goods and/or Services not delivered by Seller.

8. Technical Advice

- 8.1 Seller gives no warranty or makes no representation as to the correctness, compliance, adequacy or otherwise of the any technical advice, recommendation, information or assistance given (collectively referred to as Technical Advice) and Buyer agrees that it uses the Technical Advice at its own risk.
- 8.2 Subject to condition 9 and to the extent permitted by law, Buyer has no right of action or claim for any cost, expense, loss or damage caused either directly or indirectly by the provision of Technical Advice against Seller.

9. Liability

- 9.1 Except insofar as any rights, entitlements, remedies and liabilities cannot be excluded or limited by statute or are expressly conferred on Buyer by these terms and conditions all warranties and conditions whatsoever in relation to Goods and/or Services express or implied by statute, common law or trade usage or custom or otherwise, with the exception of Seller's negligence and wilful misconduct, are excluded to the maximum extent permitted by law.
- 9.2 Unless the Goods and/or Services supplied by Seller are of the kind usually acquired for personal, domestic or household use or consumption, Seller's liability for any and all costs, expenses, loss or damage resulting from any cause whatsoever, including alleged negligence, shall be limited (at Seller's election) to:
- (a) in the case of Goods:
- (i) the replacement of Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:

- (i) the supply of Services again; or
- (ii) the payment of the cost of having the Services supplied again.

- 9.3 Except as provided by condition 9.1 and 9.2 Seller shall not be liable to Buyer or Buyer's servants or agents for any direct, indirect, special, incidental or consequential damages of any nature whatsoever caused (whether based on negligence or other tort or contract or otherwise) arising directly or indirectly in any way attributable to the performance of a Supply Contract.
- 9.4 For any Goods not manufactured by the Seller, the Seller will endeavour to obtain for the Buyer the benefit of any manufacturer's warranty but shall not be obliged to do so.

10. Use

- 10.1 Buyer indemnifies Seller, its servants and agents from and against all claims, proceedings, suits, causes of action, costs, expenses, loss and damages arising directly or indirectly out of the ownership, possession or use of the Goods by Buyer or any other person.

11. Licenses and Permits

- 11.1 Licenses, authorisations, approvals and permits required by law in respect of the Goods and/or Services supplied are Buyer's responsibility.

12. Agents and Resellers

- 12.1 In the event of Buyer being an agent or reseller and reselling Goods and/or Services to its customers, the agent or reseller agrees to hand to such customers any warranty for the Goods and/or Services and inform the customer of the same, which warranty has been specifically provided by Seller for the agent or reseller to hand to its customers upon sale of Goods and/or Services or in the event of any warranty being packed with the Goods and/or Services to notify such customers of the existence of such warranty at the time such customers purchase the Goods and/or Services from the agent or reseller. These terms and conditions as amended from time to time shall apply to and forms part of any contract in respect of the sale of all Goods and Services by agent or reseller. Agent and reseller shall ensure that Sellers terms and conditions are forwarded to all their customers, prior to agent or reseller entering into any supply arrangements.
- 12.2 The agent or reseller hereby agrees to indemnify Seller against all proceedings, suits, causes of action, claims, losses, damages, expenses and costs whatsoever and howsoever caused arising directly or indirectly from the failure or omission of the agent or reseller to observe the obligations provided for in condition 12.1 or from any promise, representation, warranty or undertaking given to a customer by the agent or reseller which contradicts any warranty specifically provided by Seller for the agent or reseller to hand to its customers or contradicts these terms and conditions.

13. Frustration

- 13.1 Seller will use all reasonable endeavours to meet its Supply Contract obligations, but if Seller obligations become impossible to perform or shall otherwise become frustrated, Buyer shall be liable to pay to Seller all costs which Seller's suppliers, or sub-contractors have incurred directly or indirectly or for which Seller is liable under Supply Contract to Buyer at the time of frustration or impossibility or performance.

14. Patents and Trade Marks

- 14.1 Seller makes no representation or warranty of any kind, expressed or implied, that the Goods supplied or the use of such Goods or articles made from the Goods either alone or in conjunction with other substances will not infringe any patent or trade mark right. Buyer must promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and if Seller considers itself to be affected it shall be entitled completely to control the defence or compromise of any such allegation or infringement. Buyer agrees to subrogate its rights in this regard to Seller.

15. Property in Goods

- 15.1 Property and title in the Goods remains with Seller until Buyer has paid all sums owing to the Seller in respect of the Goods under this or any other contract.
- 15.2 If Buyer sells such Goods prior to payment or if they become constituents of other goods, then the proceeds of sale are the property of Seller, and Buyer holds those proceeds on trust for Seller.
- 15.3 Buyer agrees until property and title in the Goods passes in accordance with condition 15.1 unless otherwise agreed in writing by Seller, to store the Goods in a manner that clearly shows that the Goods are the property of Seller and will not remove any marks identifying the Goods as the property of Seller.

TRICAL AUSTRALIA TERMS AND CONDITIONS OF SALE

16. Assignment

16.1 Buyer must not assign or transfer any of its rights or obligations under these terms and conditions without the prior consent of Seller. Seller may in its absolute discretion and without notification to Buyer sub-contract or assign the whole or any part of the production, supply or delivery of the Goods and/or Services and all or any of its rights or obligations under these terms and conditions.

17. Pallets, Steel Cages & Stillages.

17.1 Seller retains the right of possession of any pallets, steel cages & stillages used for the delivery of Goods, and Buyer agrees to indemnify Seller fully in respect of any pallets, steel cages & stillages not returned in good order and condition to the Seller within sixty (60) days of delivery of Goods.

18. Cylinder Service

18.1 Seller will charge, and Buyer must pay a periodic charge ('Cylinder Service Charge') at Seller's standard rates or at a rate agreed by Seller and Buyer in writing for each Cylinder held by Buyer as shown in Seller's records, such charge being due and payable in accordance with condition 3, unless otherwise agreed in writing by Seller and Buyer. The Cylinder Service Charge will cover Seller's costs associated with the Cylinders including, but not limited to, costs of tracking, testing, repairing and maintaining the Cylinders. Cylinders remain the property of Seller at all times and Buyer must not encumber the Cylinders.

18.2 From time of delivery of the Cylinders until the Cylinders are returned to Seller, Buyer shall: -

- (a) only use the Cylinders for the purpose for which they were supplied;
- (b) be solely responsible for the safe custody and proper use of the Cylinders and any ancillary equipment;
- (c) be responsible for keeping the Cylinders in good condition and in safe custody and shall be liable for any loss or damage to the Cylinders;
- (d) operate and maintain the Cylinders in accordance with working instructions as stipulated by Seller from time to time;
- (e) not repair, deface, alter, or remove any aspects or parts of the Cylinders;
- (f) not remove or deface or alter any identification marks affixed to, impressed in or painted on the Cylinders;
- (g) only use the Cylinders for storing gas supplied by Seller;
- (h) keep the Cylinders clean, in good condition and in safe custody;
- (i) indemnify and hold harmless Seller against all claims, proceedings, costs, damages, losses and expenses whatsoever arising directly or indirectly out of the possession or use of any Cylinder by Buyer or any other person;
- (j) indemnify Seller for any loss or damage to the Cylinders and cleaning costs thereof.

18.3 If Buyer has paid the Cylinder Service Charge in advance and returns the Cylinder before the end of the Charge Period a pro rata refund or credit of the Cylinder Service Charge paid in advance will be made for any whole months within the Charge Period remaining after the return.

18.4 It is Buyer's responsibility to ensure that the specific Cylinders held by Buyer from time to time conforms to the specific Cylinder(s) shown as held by Buyer in Seller's records and on which Seller charges Cylinder Service Charge. Payments by Buyer of a Cylinder Service Charge invoice is deemed conclusive evidence on the number of Cylinders held by Buyer.

18.5 If following a Cylinder transaction or upon notification by Buyer or on a count by Seller it is determined that the number of Cylinders being held by Buyer is greater than that recorded in respect of the Buyer, Seller will amend its records and charge Buyer Cylinder Service Charge accordingly.

19. Waiver

19.1 Failure by Seller to insist upon strict performance by Buyer of any provisions contained in these terms and conditions or other provisions of a Supply Contract shall not be taken to be a waiver of any rights or remedies of Seller unless the same is expressed in writing and signed on behalf of the Seller.

20. Termination

20.1 If:

- (a) any payment is outstanding for more than [7] days after the due date (whether legally or formally demanded or not);
- (b) Buyer fails to observe or perform any of these terms and conditions and provisions of a Supply Contract;
- (c) a resolution is passed or proposed, or a petition is presented, or an application filed for the winding up of Buyer or a receiver and manager is appointed in respect of the property or any part of the property of Buyer;
- (d) Buyer becomes bankrupt;
- (e) Buyer being a company is deregistered;
- (f) Buyer makes or proposes to make arrangements with its creditors;
- (g) Buyer is placed under official management or administration; or
- (h) execution is levied upon the assets of Buyer and is not satisfied within 7 days,

Seller may terminate any Supply Contract by notice in writing to Buyer without prejudice to any other rights or remedies available to Seller at law, in equity or by statute. Seller may demand, and Buyer shall pay for all outstanding amounts, owed by Buyer to Seller, including, but not limited to, any charges still to become due under the unexpired portion of the term of the Supply Contract.

- 20.2 Buyer agrees to pay all Seller's costs and expenses including, but not limited to, reasonable legal costs and costs for the collection and/or the repossession of Goods incurred by Seller in exercising any of its rights or remedies whether available at law, in equity or by statute including, but not limited to those under paragraph 19.1
- 20.3 At any time after termination of the Supply Contract whether at the expiration of the term of the Supply Contract or in accordance with paragraph 19.1 or otherwise Seller may enter (forcibly if necessary) the premises of Buyer where the Goods are located or believed to be located and remove and retake possession of the same demolishing if necessary any obstructions which prevent such removal and without being liable to Buyer for any loss, damage, costs or expenses caused by such removal. Buyer must reimburse Seller on demand for all costs and expenses incurred by Seller in effecting removal of the Goods. A certificate in writing signed by any director, manager or secretary of Seller shall be conclusive evidence of the costs and expenses incurred.
- 20.4 Buyer indemnifies and must keep indemnified Seller for and against all actions, proceedings, claims, losses, damages, costs and expenses arising from anything done by or on behalf of Seller in connection with the removal of the Goods or the entry into the premises in accordance with Condition 20.3.
- 20.5 Buyer acknowledges the right of Seller to enter into any premises under the control of Buyer and grants a licence to Seller to do so, where Goods that have not been paid for in full are held, and Buyer further acknowledges the right of Seller to remove those Goods in accordance with Condition 20.3.

21. Construction of Contract

- 21.1 A Supply Contract is governed by the laws of South Australia, Australia.
- 21.2 A Supply Contract constitutes the entire agreement between the parties as to its subject matter.
- 21.3 A Supply Contract may be altered only in writing signed by each party unless otherwise specified in these terms and conditions.

22. Bribery and Corruption

- 22.1 Neither party shall engage in any activity, practice or conduct which would constitute or result in an offence by either party under applicable Australian or United Kingdom anti-bribery laws or regulations, including the Bribery Act 2010 (UK).
- 22.2 Each party shall devise, implement and enforce its own written anti-bribery policies and procedures constituting adequate procedures in compliance with the laws or regulations under the relevant jurisdiction of each party. Each party shall produce to the other party a copy of such written policies and procedures within seven days of receiving a written request from the other party.

23. Compliance with Anti-Slavery and Human Trafficking Laws and Policies

- 23.1 The Buyer shall:

- (a) comply with all anti-slavery and human trafficking laws, statutes and regulations applicable in Australia and the United Kingdom from time to time in force;
- (b) act consistently with the values set out in any reasonable anti-slavery policy provided by the Seller to the Buyer at any time;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 (UK) if such activity, practice or conduct were carried out in the United Kingdom;
- (d) not engage in any activity, practice or conduct that would constitute an offence under Division 270 of the Criminal Code Act 1995 (Cth) if such activity, practice or conduct were carried out in Australia;
- (e) have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance with clauses 23.1(a) to 23.1(d);
- (f) notify the Seller immediately in writing if it becomes aware or has reason to believe that it has breached any of the Buyer's obligations under this clause 23, setting out full details of the circumstances concerning the breach.

23.2 The requirements of clause 23.1 support the Sellers' commitment to avoiding modern slavery occurring within the Sellers' supply chains or any other business relationship.

24. Severability

Part or all of any provision of a Supply Contract that is illegal or unenforceable maybe severed from the Supply Contract and the remaining provisions of the Supply Contract continue in force.

25. Definitions

25.1 Charge Period means twelve (12) months or such other period stipulated by Seller.

*C & F means cost and freight.

*C.I.F means cost, insurance and freight.

Cylinders means the gas Cylinders (of varying sizes) including any valve attachments, refill protection devices, pressure gauge regulators and gas controlling and conserving devices and including crates, packs and pallets in which gas Cylinders may be stored.

*F.I.S. means free into store.

*F.O.B means free on board.

*F.O.T means free on transport.

'Force Majeure Event' includes but is not limited to Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw materials, labour, Cylinders or transportation facilities, governmental laws, regulations, orders, requests or action, breakage or failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of Seller or in the event of labour trouble, strike, lockout or injunction (whether or not such labour event is within the reasonable control of Seller).

'Goods' means goods supplied by Seller to Buyer.

'Seller' means Trical Australia and any and all companies related to it or any subsidiary of it and any successors and assignees of Trical Australia.

'Services' means services supplied by Seller to Buyer.

'Supply Contract' means the contract between the Buyer and Seller for the Buyer to purchase Goods and/or Services from Seller and Seller to supply Goods and/or Services to Buyer which are governed by these terms and conditions.