

# CREDIT ACCOUNT APPLICATION FORM

"Access Hardware", "the Company", "we" or "us" means Access Hardware (TAS) Pty Ltd trading as Jacksons Security and trading as Access Hardware (ABN 36 080 370 109). **Please refer to [www.accesshardware.com.au](http://www.accesshardware.com.au) for a full copy of Access Hardware's terms and conditions of supply.**

## ACKNOWLEDGEMENTS AND AGREEMENTS

I/We the Customer acknowledge that the Company (as defined in the Terms and Conditions attached to this Form ("Conditions")) has informed us that if this application is granted by the Company, the Conditions as set out below will be included in all transactions with it. You agree that any terms and conditions referenced by you in any order will only apply to the extent the Company has accepted those terms in writing. If they do apply, these Conditions will prevail to the extent of any inconsistency.

I/We the Customer also declare that all statements made by me/us in this application are true, accurate and complete in every particular.

CUSTOMER DETAILS					
Company Name:					
Trading Name:					
ACN:		ABN:			
Trading Address:					
Registered Address:					
Phone:		Fax:			
Email Address:					
Year Business Began:					
Monthly Credit Limit Applied For:					
Ownership Structure: (pls tick)					
Sole Trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Company Pty Ltd <input type="checkbox"/>	Body Corporate <input type="checkbox"/>	Company Ltd <input type="checkbox"/>	Gov't Dept <input type="checkbox"/>
NATURE OF BUSINESS					
Please describe your business. (e.g. Builder / Maintenance Company etc)					
DIRECTORS/OWNERS/PARTNERS NAMES					
Director/Owner/Partner Name #1:		Date of Birth:			
Director/Owner/Partner Name #2:		Date of Birth:			

**Please attach a photocopy of each Director / Owner / Partner drivers licence to this application form. Companies listed on the ASX, Government Departments or Body Corporates are not required to provide the above details.**

ACCOUNTS DEPARTMENT CONTACT DETAILS			
Name:			
Email:			
Direct Phone:		Direct Fax:	
TRADE REFERENCES			
1	Company:		Phone:
	Address:		Fax:
	Email:		
2	Company:		Phone:
	Address:		Fax:
	Email:		
3	Company:		Phone:
	Address:		Fax:
	Email:		
PRIVACY COLLECTION STATEMENT			
<p>The Customer authorises the Company to collect credit information about its personal, consumer and commercial credit worthiness from any bank or trade referees provided in this Credit Account Application Form and from any other credit provider or credit reporting agency such as Equifax Australia Information Services and Solutions Pty Ltd, Dun and Bradstreet (Australia) Pty Ltd or Experian Australia Credit Services Pty Ltd (“CRB”) for the purpose of assessing this application for credit or in connection with any guarantee given by the Customer in accordance with the Privacy Collection Statement and the Company’s Privacy Policy located at <a href="http://www.accesshardware.com.au/privacy">www.accesshardware.com.au/privacy</a>. The Customer authorizes the Company to use, disclose or exchange, to the extent permitted by law, with the Company’s Related Bodies Corporate and other credit provider information about the Customer’s credit worthiness in order to assess this application for credit and monitor credit worthiness. Where the Customer is an individual, the Customer acknowledges that:</p> <p>(a) CRBs may include the information in reports provided to the Company to assist them to assess your credit worthiness;</p> <p>(b) if you fail to meet your payment obligations in relation to consumer credit or commit a serious credit infringement, the Company may be entitled to disclose this to the CRBs;</p> <p>(c) you can obtain a copy of the Company’s policy about the management of credit-related personal information at <a href="http://www.accesshardware.com.au/privacy">www.accesshardware.com.au/privacy</a> and the relevant CRB’s policy about the management of credit-related personal information is located on each CRB’s website by following the ‘privacy’ links or by contacting the relevant CRB directly;</p> <p>(d) you have a right to access your information from the Company, to request the Company to correct the information and to make a complaint to the Company;</p> <p>(e) you have a right to request CRBs not to use your credit reporting information for the purposes of pre- screening of direct marketing by the Company; and</p> <p>(f) you have a right to request the relevant CRB not to use or disclose credit reporting information about you, if you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud.</p>			

**EXECUTION**

**Note:** If the customer is a Partnership at least two partners must sign. If the customer is a company any two directors or a director and secretary must sign. The witness(es) must not be the Customer nor an agent of them and must be over 18 years of age.

**Note:** If executed by an authorised representative, the authorised representative acknowledges that they are executing this deed for and on behalf of a party as an authorised representative, that authorised representative by executing this deed declares and warrants that he or she has been duly appointed and has no notice of the power of the authority under which he or she executes the agreement having been revoked.

**By signing below, you agree to be bound by the Conditions.**

**Dated:** \_\_\_\_\_ **of** \_\_\_\_\_ **20** \_\_\_\_\_

<u>Individual/Partnerships</u>	<u>Body Corporate/Owners Corporation/Company Ltd/Gov't Dept</u>	<u>Company Pty Ltd</u>
<b>Signed, sealed and delivered</b> by the Customer/Partner in the presence of the witness below	<b>Signed, sealed and delivered</b> for and on behalf of the Customer by an authorised representative in the presence of the witness below	<b>Executed</b> by the Customer in accordance with section 127(1) of the Corporations Act 2001
_____ Signature of Customer/Partner	_____ Signature of authorised representative	_____ Signature of director
_____ Name of Customer/Partner (print)	_____ Name of authorised representative (print)	_____ Name of director (print)
_____ Signature of witness	_____ Signature of witness	_____ Signature of director/company secretary ( <i>Please delete as applicable</i> )
_____ Name of witness (print)	_____ Name of witness (print)	_____ Name of director/company secretary (print)
_____ Signature of Partner		
_____ Name of Partner (print)		
_____ Signature of witness		
_____ Name of witness (print)		

## GUARANTEE AND INDEMNITY IN FAVOUR OF THE COMPANY

The undersigned (“**Guarantors**”), having requested the Company to open credit facilities to the Customer named below hereby jointly and severally (if more than one of us):

1. Guarantee prompt and due performance from time to time of each and every one of the Customer's obligations to the Company (including, without limitation, the obligation to pay the amount owing for the Products, all expenses incurred by the Company in enforcing the Conditions, and all other amounts as set out in the Conditions).
2. Indemnify the Company and to save it harmless from all loss due to (whether directly or indirectly):
  - the Customer's failure to pay on time each amount due by it to the Company;
  - interest being charged on outstanding amounts at a rate of 2% above for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) calculated daily and compounded monthly, being a rate that the parties agree represents the genuine pre-estimate of the damage likely to be caused by a breach of these Conditions or a failure to make any payment to the Company when such payment is due and payable; and
  - all debt collection costs.
3. Agree that:
  - this document is valid in respect of any signatory, whether others have signed it or not;
  - amounts due to the Company by the Customer are debts recoverable in the State;
  - the Company may grant time or other concessions to the Customer without affecting its right to recover under this document; and
  - the liability of each signatory is on a joint and several and continuing basis.
4. Your information is collected by the Company and will be used and held in accordance with our Privacy Policy located at [www.accesshardware.com.au/privacy](http://www.accesshardware.com.au/privacy). Information you provide will be used for the purpose of assisting the Company to assess your credit application or ongoing credit provision. If you do not provide this information, we may not be able to accept your credit application. The Customer acknowledges that this information may be kept on a credit information file and may be disclosed to credit reporting agencies and other service providers for the purpose of assessing the credit application or ongoing credit provision or as required by law. To access or change your information or to make a complaint please contact our privacy officer via email at [privacy@accesshardware.com.au](mailto:privacy@accesshardware.com.au)

**This is an important document. If you do not understand this document you should seek legal advice.**

**Note: Companies listed on the ASX, Government Departments or Body Corporates are not required to provide a Guarantee and Indemnity.**

**Executed as a deed.**

<b>CUSTOMER</b>			
<b>Name:</b>			
<b>ACN:</b>			
<b>Address:</b>			
<b>Customer Signature:</b>		<b>Dated:</b>	
<b>GUARANTOR</b>			
<b>Full Name of Guarantor:</b>			
<b>Address:</b>			
<b>Phone No:</b>		<b>Fax No:</b>	
<b>Signed, sealed and delivered by the Guarantor:</b>		<b>Dated:</b>	
<b>WITNESS</b>			
<b>Full Name of Witness:</b>			
<b>Address:</b>			
<b>Witness Signature:</b>		<b>Dated:</b>	

## CONDITIONS

### GENERAL TERMS AND CONDITIONS (SECTION A) (PLEASE READ CAREFULLY)

#### 1. Interpretation

In these conditions:

“**ACL**” means the Australian Consumer Law set out in Schedule 2 to the CCA.

“**Agreement**” means the agreement between You and the Company for the supply of Products and/or Services comprising the documents referred to in clause 2.1 (as varied by the Company from time to time).

“**CCA**” means the *Competition and Consumer Act 2010 (Cth)*.

“**Company**” or “**We**” or “**Us**” or “**Our**” means Access Hardware (TAS) Pty Ltd trading as Jacksons Security and trading as Access Hardware (ABN 36 080 370 109).

“**Consequential Loss**” means any loss or damage arising from a breach of contract, under an indemnity or guarantee, tort (including negligence), under statute or any other basis in law or equity being, loss of profits; loss of revenue; loss of savings or anticipated savings; loss or denial of opportunity; loss of any contract or future business; loss of custom; loss of use.

“**Consumer Guarantees**” means the guarantees that apply to goods and services purchased by consumers (as defined in the CCA), contained in Part 3-2, Division 1 of the ACL.

“**Corporations Act**” means *Corporations Act 2001 (Cth)*.

“**Default Rate**” means the interest rate that is 2% above the rate fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* from time to time.

“**General Terms and Conditions (Section A)**” means the terms and conditions set out in Section A of this Agreement that apply to the supply of all Products and Services.

“**Guarantee and Indemnity**” means the guarantee and indemnity in favour of the Company annexed to any relevant credit application between You and the Company.

“**GST**” has the meaning given to that term in GST Law.

“**GST Law**” has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“**Insolvent**” has the meaning in section 95A of the Corporations Act.

“**Intellectual Property**” means all registered and unregistered rights in present and future copyright, trade marks, designs and patents, trade secrets, semi-conductor or circuit layout rights, rights in confidential information and all rights conferred under statute, common law or equity in relation to the above.

“**Non-Stocked Product**” means a Product that is not kept in stock at all times and has been purchased in by the Company specifically for your order and/or described as “Non Stocked” on an Order.

“**Order**” means an order by You to the Company requesting the supply of Products and/or Services including as set out in any order acknowledgement.

“**Other Goods**” has the meaning ascribed to it in clause 2.3 of Schedule 1 of the *Personal Properties Securities Regulations 2010(Cth)*.

“**Other Property**” means all present and after-acquired property, except the Other Goods supplied by the Company to You, of You whether acquired alone or jointly as a tenant in common or as joint tenants.

“**PPSA**” means the *Personal Property Securities Act 2009 (Cth)*.

“**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA.

“**Products**” means the architectural hardware specified in any Order and/or supplied to You pursuant to this Agreement, which may include (without limitation) locks, keys, master keys, door handles, door closers, washroom equipment and sanitary equipment.

“**Related Body Corporate**” is as defined in section 9 of the *Corporations Act 2001 (Cth)*.

“**Representative**” means the officers, agents or employees of the Company or You (as the case may be).

“**Security Interest**” has the meaning given to it in section 12 of the PPSA.

“**Services**” means the services specified in any Order and/or supplied to You pursuant to this Agreement, which may include (without limitation) the following:

- 1.1 (**Installation Services**) installation of the Products or Third Party Products, by the Company, in accordance with this Agreement so as to render the Product or Third Party Products operable and suitable for use and includes integration of the Product or Third Party Products into Your operating environment. The Company does not install power points;
- 1.2 (**Maintenance Services**) maintenance of Products or Third Party Products and may include preventative maintenance and reactive maintenance of doors;
- 1.3 (**Locksmith Services**) locksmith services including installing, repairing, rebuilding and servicing mechanical or electrical locking devices, disassembling locks (such as padlocks, safe locks, and door locks), cutting new or duplicate keys, opening door locks and safe locks without keys and may include sales and installation and relocations of safes, programming keys for vehicles, designing a keying matrix and assistance with lockouts situations;
- 1.4 (**Alarm System Services**) installation of alarm systems and monitoring of alarms which may include design, installation and supply of domestic and commercial alarm systems, the design, supply and installation of CCTV systems, or where located in applicable areas of Australia, alarm monitoring system;
- 1.5 (**Doors**) the supply, installation, service and commission of automatic doors, non – automatic doors, frames and other door hardware;
- 1.6 (**Electronic Access Control Systems**) the design, supply, installation and commission of Electronic Access Control Systems (or components of a new or existing system); or
- 1.7 (**Tagging Fire Doors**) tagging of fire doors as fire door compliant (Tasmania only).

“**Service Specific Terms and Conditions (Section B)**” means the terms and conditions set out in Section B of this Agreement that apply to a particular category of Services as specified in Section B.

“**Specifications**” means the agreed specifications and scope of the Services, as set out in the Order.

“**Third Party Products**” means any equipment, goods or products purchased by You from someone other than the Company.

“**You**” or “**Your**” or “**Customer**” means the entity to whom the Products and/or Services are supplied.



## 2. Application of terms and conditions

- 2.1 This Agreement consists of the:
- 2.1.1 relevant Order received by the Company in writing;
  - 2.1.2 General Terms and Conditions (Section A) which apply to the supply of all Products and Services;
  - 2.1.3 Service Specific Terms and Conditions (Section B) where applicable; and
  - 2.1.4 relevant Orders received by the Company verbally.
- 2.2 If there is any inconsistency between any provisions of the documents referred to in clause 2.1, they shall take precedence in the order listed in clause 2.1.
- 2.3 You agree that the terms and conditions of this Agreement govern and apply to the supply and/or provision of all Products and/or Services provided by the Company to You.
- 2.4 This Agreement only applies to the extent that You Order specific Products and Services from the Company.
- 2.5 You agree that the terms and conditions contained in this Agreement will prevail over and replace any terms and conditions proposed by You.

## 3. Terms of Sale

- 3.1 Upon placing an Order, You are deemed to accept, and agree to be legally bound by, this Agreement.
- 3.2 Subject to the ACL, any promotional material and description in catalogues, brochures or on the Company's website are for the sole purpose of giving an approximation of the Products and/or Services and shall not form part of this Agreement or have contractual force.
- 3.3 The Company reserves the right to improve, change or alter the descriptions of the Products and/or Services offered and to discontinue or add any Product and/or Services without prior notice to You (so long as that doesn't affect any Orders placed prior to the change).
- 3.4 Installation and fitting, maintenance or provision of other Services by the Company in respect of the Products is not included in the supply of Products unless otherwise specifically indicated in the Order.

## 4. Orders

- 4.1 It is Your responsibility to provide all current and accurate information necessary to enable supply of the Products and/or Services listed in the Order and You are responsible for any costs arising directly or indirectly from any error or omission in that information or delay in providing that information.
- 4.2 All Orders must be made in writing unless otherwise agreed by the Company. You agree and acknowledge that if an Order is made verbally by any of Your Representatives, that Order will be deemed to have been made as if it was made directly by You and will bind You. Further, any Order (verbal or written) made by a Related Body Corporate of You, or the Representatives of that Related Body Corporate, binds You as well as the Related Body Corporate (jointly and severally) to this Agreement.
- 4.3 The Company, without prejudice to any other rights it has against You, reserves the right to charge You for any costs or extra expenses incurred by the Company if an Order is varied or cancelled by You.

## 5. Provisions of Services

- 5.1 Where applicable, the Specific Service Terms and Conditions (Section B) of this Agreement apply to the supply of certain Services to You.
- 5.2 The Company agrees to provide the Services with due care, skill and diligence and in accordance with this Agreement and the Specifications.
- 5.3 The Company makes no warranty or representations of any kind in relation to any Third Party Products provided by You in connection with the Services and without limiting the foregoing the Company does not warrant that any Third Party Products will be of acceptable quality and fit for Your purpose.
- 5.4 The Company may engage third parties to provide all or part of the Services to You.
- 5.5 You must obtain all consents required from third parties to enable the Company to access any premises or property required for the Company to provide the Services.
- 5.6 The Company will not be liable for any loss or claim that the Company may incur as a result of a breach of Your obligations under clause 5.5, including a claim by a third party for trespass to property or an action in conversion or any similar action and You agree to indemnify the Company for such claim or loss.
- 5.7 You must provide a safe and secure work environment at all times while the Company or its Representatives are on Your premises to enable the Services to be provided.
- 5.8 All such assistance to be provided by You under this clause or in general shall be at Your sole cost and expense.

## 6. Price

- 6.1 If an incorrect price or incorrect information has been included in a quote or there has been a material price increase including without limitation as a result of a supplier or other circumstances from a supplier, the Company may withdraw or amend a quote. Unless withdrawn or amended by the Company earlier, the quotation is valid for 30 days from the date of the quotation.
- 6.2 You agree to pay the price for the Products and/or Services as set out in the Order.
- 6.3 In respect of GST –
- 6.3.1 Unless otherwise expressly stated all prices quoted by the Company are GST exclusive.
  - 6.3.2 In addition to the amount payable for the Products and/or Services, You must pay to the Company an amount equal to any GST applicable to any taxable supply by the Company under this Agreement.
  - 6.3.3 You must pay GST without deduction or set off of any amounts, at the same time and in the same manner as payment for the relevant supply of the Products and/or Services.
  - 6.3.4 You indemnify the Company for any loss that the Company may incur as a result of the incorrect payment or non-payment of any GST and associated fees and/or penalties.

## 7. Payment Terms

- 7.1 If you place Your Order via the Access Hardware Online Store:
- 7.1.1 once You select a Product or Service that you wish to order, you will be shown or told (on the Access Hardware Online Store) the price you must pay including GST and any other charges; and

- 7.1.2 You must pay for the Order in full at the time of ordering by one of the payment methods We provide on the Access Hardware Online Store. You must be fully entitled to use the payment method or account used for purchases. The payment method or account must have sufficient funds or credit facilities to cover the purchase.
- 7.2 Subject to clause 7.1 or as otherwise agreed, You will be invoiced:
- 7.2.1 for the supply of Products – at the time the Product is completed and ready for collection / delivery (as applicable) whether or not You wish to collect / take delivery (as applicable) of the Products at that time; and
- 7.2.2 for the supply of Services – in accordance with the billing periods specified in the Order and where no billing period is specified, monthly.
- 7.3 Subject to clause 7.1, You must pay in full the amount payable for the Products and/or the provision of Services (as set out in the invoice) within 30 days of the end of the month in which the invoice is issued.
- 7.4 If Your Order is delivered in installments or on an ongoing basis and you are waiting on further installments of Your Order to be delivered or provided, You cannot refuse to pay an invoice of the Company on the grounds that an Order has not been fully delivered.
- 7.5 Credit will automatically be stopped if Your account is overdue in which case no further Products or Services will be supplied to You until the earlier of:
- 7.5.1 all of Your accounts with the Company are paid in full; and
- 7.5.2 the Company accepts an Order in its absolute and sole discretion.
- 7.6 If You fail to make any payment to the Company on the due date or You are in breach of any of the terms and conditions of this Agreement or You are, in the reasonable opinion of the Company, Insolvent, then the Company is entitled to:
- 7.6.1 cease supply of the Products and/or Services; and/or
- 7.6.2 refuse to deliver to You the Products (or any part thereof) and/or provide the Services to You (or any part thereof); and/or
- 7.6.3 stop any Products in transit; and/or
- 7.6.4 otherwise cease to perform any of its obligations to You,
- and You must immediately pay to the Company all amounts due and payable to the Company in respect of Products and Services supplied, plus interest at the Default Rate, calculated daily and compounded monthly on and from the date such moneys first become due to and excluding the date of payment to the Company in full and all expenses incurred by the Company in enforcing the terms and conditions of this Agreement (including, without limitation, legal expenses, and all debt collection agency costs incurred by the Company on a full indemnity basis).
- 8. Delivery and Risk**
- 8.1 The delivery times of the Products or the allocated time of providing the Services are estimates only and You agree, subject to law, that the Company is not liable for late delivery, non-delivery or for any loss, damage or delay caused to You from late or non-delivery of the Products or the provision of the Services.

- 8.2 If You are unable or unwilling to accept delivery of the Products then You are liable for all storage costs, charges, expenses and additional delivery charges, with such amount to be paid as and when invoiced at the discretion of the Company.
- 8.3 Notwithstanding this clause 8, You or Your agent bear all risk of loss or damage to the Products upon and from delivery of the Products to You or at Your direction. You are responsible for effecting and maintaining all policies of insurance as is appropriate and any failure to do so is exclusively at Your risk.
- 9. Title**
- 9.1 Title to the Products passes to You once the Company has received all amounts owing to it in respect of the Products, any other amounts owing to the Company and upon You meeting all of Your obligations in respect of this Agreement and all other contracts between the Company and You.
- 9.2 Until title passes to You, You acknowledge and agree that:
- 9.2.1 You must store and identify the Products as the Company's property;
- 9.2.2 upon demand from the Company, deliver up the Products and provide reasonable assistance to the Company's Representatives to repossess the Products;
- 9.2.3 should the Products be lawfully repossessed by the Company, the Company reserves the right to keep or resell the Products; and
- 9.2.4 if the Products are resold to a third person by You, You hold the sale proceeds on trust for the Company. You must hold the sale proceeds in a separate account and must not deposit in that account monies received from any other entity.
- 10. PPSA**
- 10.1 All capitalised terms in this clause have the meanings given to them in the PPSA (unless defined otherwise in this Agreement).
- 10.2 As security for the payment in full of the amount(s) owing by You to the Company under this Agreement or any other contract You have with the Company, You grant to the Company a Security Interest in the Products and any proceeds of sale of the Products. You agree that all Products supplied by the Company to You are Other Goods. You acknowledge and agree that this Agreement evidences a Security Agreement and that the Company may register on the PPSR a financing statement in relation to its Security Interest.
- 10.3 In addition and separate to clause 10.2, You agree that this Agreement also create a Security Interest in all of Your Other Property (although such Security Interest is not intended to prevent You from transferring such Other Property in the ordinary course of Your business) in favour of the Company to secure payment and performance of all of Your obligations under this Agreement, all Orders which are accepted by the Company and all Products and Services supplied by the Company to You.
- 10.4 You agree that You receive value on the date of delivery of the Products and do not wish to postpone the attachment of the Security Interest granted under this Agreement. You consent to do anything the Company requires to ensure that its Security Interest is a perfected Security Interest in the form of a purchase money security interest (as defined in section 14 of the PPSA) and has priority to the fullest extent permitted at law.

- 10.5 If You make payment to Us at any time whether in connection with this Agreement or otherwise, We may, at Our absolute discretion, apply that payment in any manner we see fit (e.g. we may apply payments that You make to past debts that You owe Us instead of attributing that payment to the Products that You intended to pay for).
- 10.6 You agree to immediately notify Us of any changes to your name or address.
- 10.7 You irrevocably grant to the Company the right to enter upon Your premises, without notice, and You will pay on demand any losses arising from, and any costs and expenses incurred in connection with registration of the Security Interest and/or any action taken by the Company to protect our Security Interest in the Other Goods and/or Other Property.
- 10.8 Any Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over any other registered or unregistered Security Interest. You must keep the Products free of any charge, lien or Security Interest and You must not otherwise deal with the Products in a way that will or may prejudice any rights of the Company under this Agreement or the PPSA.
- 10.9 You waive 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.

#### 11. The Company's Warranties

- 11.1 Where the ACL applies, Our Products and Services may come with guarantees that cannot be excluded under the ACL.
- 11.2 Nothing in this Agreement is to be read or applied so as to exclude, restrict or modify any guarantee or other right or remedy in the ACL or other law which cannot by law be excluded, restricted or modified.
- 11.3 Except as expressly set out in this Agreement or in respect of the Consumer Guarantees, the Company makes no warranties or other representations in respect of the Products or Services.
- 11.4 The Company's liability in respect of the Products or the provision of the Services, whether for breach of agreement, negligence, breach of statutory duty or any other cause of action other than a breach of an applicable Consumer Guarantee in connection with the Products or the Services is limited to the total fees paid to the Company by You in respect of an Order.
- 11.5 Subject to this clause 11, the Company extends to You the benefit of the express warranty, if any, provided to the Company by its suppliers in relation to the particular Products supplied by the Company to You pursuant to this Agreement.

#### 12. Limitations of Liability

- 12.1 If the CCA (or analogous legislation in a relevant jurisdiction) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of the Company is limited, at the option of the Company, to:
- 12.1.1 in the case of services:
- (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again; and
- 12.1.2 in the case of goods, any one or more of the following:

- (A) the replacement of the goods or the supply of equivalent goods;
- (B) the repair of the goods;
- (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (D) the payment of the cost of having the goods repaired.

12.2 To the extent permitted by law, the Company and its Representatives are not liable for any special, indirect or Consequential Loss.

12.3 Subject to clause 11.1, You acknowledge that You do not rely on the skill or judgment of the Company as to whether or not the Products or Services are fit for any particular purpose.

#### 13. Indemnity

13.1 Subject to the ACL, You indemnify the Company from every liability, loss, damage, cost and/or expense directly or indirectly incurred or suffered by the Company caused by or contributed to or by any of the following:

- 13.1.1 the Company complying with any of Your instructions about the Products or Services;
- 13.1.2 You making any statement about the Products or Services (for example, about their performance or characteristics) without the Company's prior written approval;
- 13.1.3 any negligence or breach of duty or breach of this Agreement by You or any third party; or
- 13.1.4 Your, or any third party associated with the Customer's, failure to:
  - (A) adequately provide or display safety markings or safety information on or with the Products;
  - (B) comply with any law about the Products You use (for example, their sale, marketing, labeling or marking);
  - (C) take any reasonable precaution to bring to the attention of any potential users of the Products any dangers associated with Products;
  - (D) take any reasonable precaution to detect any matters in which the Company may become liable in any way (for example, under the ACL);
  - (E) provide correct information to the Company;
  - (F) immediately advise the Company (in writing) of any changes to the information You provided to the Company; or
  - (G) correctly use, operate, repair or maintain the Products by You or any third party,

except to the extent that such liability, loss, damage, cost and/or expense is caused or contributed to by the negligent, fraudulent or intentional acts or omissions of the Company.

#### 14. Inspection and returns

- 14.1 You must inspect the Products at the time of collection / delivery (as applicable) and, for refunds other than as required by the ACL, within 7 days of the date of collection / delivery (as applicable) notify the Company in writing of any damage or defect in the Products or of any non-compliance with description.
- 14.2 You warrant and acknowledge that unless You notify the Company as provided in sub-clause 14.1, You are deemed to have accepted the Products.



- 14.3 To the extent permitted by law and this Agreement, Products are non-returnable unless they are faulty or breach a Consumer Guarantee. Despite this, the Company may in its absolute discretion choose to accept a return of undamaged Products (other than Non Stocked Products) for change of mind if those Products are in their original condition and packaging and returned within 60 days from the date of collection / delivery (as applicable).
- 14.4 If the Company accepts a return in accordance with clause 14.3, a restocking fee of 15% of the original purchase price of the returned Product may be deducted from any credit note or refund.
- 15. Intellectual Property**
- 15.1 You acknowledge and agree that the supply of the Products and/or the provisions of the Services does not constitute a transfer of any Intellectual Property in the Products and/or Services (or part thereof).
- 15.2 To the extent that the Company owns or has the right to use Intellectual Property rights in and to the Products and/or Services and any associated documentation, the Company will retain ownership of and rights in all those Intellectual Property in and to the Products and/or Services and any associated documentation.
- 15.3 To the extent that the Company owns documentation produced or developed in connection with the Products and/or performance of the Services it will retain the ownership of any such documentation.
- 16. Privacy**
- 16.1 You agree to the Company collecting, using and disclosing personal information of You for various purposes in accordance with the Company's Privacy Policy (located at [www.accesshardware.com.au/privacy](http://www.accesshardware.com.au/privacy) as amended from time to time).
- 17. Force Majeure**
- 17.1 If the Company is prevented (directly or indirectly) from supplying the Products or Services (or any part thereof) by reason of acts of God, strikes, lockouts, trade disputes, fire, breakdown, delay in the manufacture of the Products, interruption of transport, government action, non-delivery of raw materials or any cause whatsoever (whether or not of a like nature to those specified above) outside its reasonable control, the Company is not liable to You whatsoever and the Company is entitled, in its absolute discretion, to give notice to You to either cancel the Order or this Agreement or extend the time for performance by the Company of its obligations.
- 18. General**
- 18.1 This Agreement, any credit application between You and the Company and the Guarantee and Indemnity constitute the entire agreement between the Company and You and any prior agreement or understanding between the parties in respect of the subject matter in this Agreement, including any quotation, is superseded by, and are to be read subject to, this Agreement.
- 18.2 The Company may amend this Agreement from time to time. A copy of the most current Agreement can be found at [www.accesshardware.com.au/terms](http://www.accesshardware.com.au/terms). The terms and conditions current as at the time you place Your Order will apply to the supply of the Products and Services under that Order.
- 18.3 This Agreement is governed by and construed in accordance with the laws of Victoria, Australia and the parties submit to the jurisdiction of the Victorian Courts and courts of appeal from them.
- 18.4 If a provision of this Agreement would, but for this clause, be unenforceable, the provision must be read down to the extent necessary to avoid the result and if the provision cannot be read down to that extent, it must be severed without effecting the validity and enforceability of the remainder of this Agreement.
- 18.5 A party waives a right relating to this Agreement only by notice in writing to the other party that it waives that right. A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or any other right.
- 18.6 Nothing in this Agreement is to be treated as vesting any agency, joint venture or partnership between the parties or any relationship other than that of independent contracting parties.

**SERVICE SPECIFIC TERMS AND CONDITIONS (SECTION B)  
(PLEASE READ CAREFULLY)**

**19. Installation Services**

- 19.1 This clause applies where Installation Services are provided to You and/or specified in an Order.
- 19.2 To the maximum extent permitted by law, the Company takes no responsibility for the installation and fitting of Products or Third Party Products other than Products or Third Party Products which are installed or fitted directly by the Company or its subcontractors.
- 19.3 To the maximum extent permitted by law, the Company shall not be responsible for any liability (whether in contract, tort, or otherwise) from any injury, damage or loss arising in any way in connection with:
- 19.3.1 the improper installation or fitting of Products or Third Party Products by You or any third party; or
- 19.3.2 the use of such improperly installed or fitted Products or Third Party Products (by You or any third party).
- 19.4 You shall indemnify and keep the Company and its Representatives fully indemnified from and against any and all suits, claims, actions, demands, losses, damages, liabilities, costs and expenses which may be suffered or incurred by the Company arising out of or in connection in any way as a result of:
- 19.4.1 the improper installation or fitting of Products or Third Party Products by You or any third party; or
- 19.4.2 the use of such improperly installed or fitted Products or Third Party Products (by You or any third party).

**20. Maintenance Services**

- 20.1 This clause applies where Maintenance Services are provided to You and/or specified in an Order.
- 20.2 Unless specified otherwise in the relevant Order, the Company is not required to perform Maintenance Services in respect of:
- 20.2.1 Products or Third Party Products that have been altered, damaged or modified by a person other than the Company;
- 20.2.2 problems caused by Your negligence, abuse or misapplication of the Products or Third Party Products or by failure to use the Products or Third Party Products as specified in any documentation provided with the Products or Third Party Products (as applicable);
- 20.2.3 problems caused by electrical failure, air conditioning or humidity control or any other environmental factor on Your premises;
- 20.2.4 accessories, attachments, supplies or items associated with the Products or Third Party Products other than those provided by the Company under this Agreement; or
- 20.2.5 performance issues resulting from changes in Your operating environment not approved by or agreed with the Company.
- 20.3 You shall keep such records relating to the use and performance of the equipment, goods, Products or Third Party Products undertaking Maintenance Services as may be directed by the Company from time to time. You shall permit the Company to have access to such records at all reasonable times, including all periods during which the Maintenance Services are being performed or preparations

are being made for the Maintenance Services to be performed.

- 20.4 Unless specified otherwise in the relevant Order, the Maintenance Services do not include:
- 20.4.1 repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of You or Your servants, agents, contractors or invitees or any person whether or not that person is under Your control or direction or authority;
- 20.4.2 repair of damage caused by the operation of the equipment, goods, Third Party Products or Products other than in accordance with the specifications or otherwise than in accordance with the direction, instruction or recommendations of the Company or its personnel;
- 20.4.3 repair of damage arising from the re-installation, moving or removing of the equipment, goods or products by a person other than the Company;
- 20.4.4 repair of damage caused by any circumstances beyond the Company's reasonable control;
- 20.4.5 furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the equipment, goods or products unless otherwise provided in the Order;
- 20.4.6 work performed outside normal business hours on business days;
- 20.4.7 the cost of any equipment, goods, Third Party Products or Products or part whether spare part, consumable or otherwise supplied, unless otherwise provided in the Order; or
- 20.4.8 the upgrading of or retrofitting of improvements or major modification to the equipment, goods, Third Party Products or Products.
- 20.5 Nothing in this Agreement shall relieve You from Your obligations to perform normal day to day maintenance on the equipment, goods, Third Party Products or Products as per any documentation supplied by the manufacturer and/or the Company including but not restricted to normal cleaning procedures, checks and adjustments designed for operational use.
- 20.6 During the course of the term of this Agreement, You shall not carry out or attempt to carry out modifications to, repair of, experiments on, or maintenance of the equipment, goods, Third Party Products or Products other than day to day maintenance and You shall not permit any other person except the Company's personnel or representatives to carry out such work unless prior written approval has first been obtained from the Company.
- 20.7 The replacement costs of any item found faulty during maintenance visits or call outs will be chargeable to You (except where required by the ACL to be paid by the Company).
- 20.8 In the case of Maintenance Services for which an additional charge as specified in the relevant Order (**Additional Charge**) is payable by You for replacement of spare parts, title in such replacement or spare parts shall pass to You only upon full payment of the Additional Charge. Unless otherwise agreed in writing between the parties, risk of damage to or loss of replacement spare parts shall pass to You as soon as they are delivered to Your designated premises.
- 20.9 The Company shall provide all the necessary tools, equipment, testing and diagnostic apparatus which the

Company requires in order to carry out the Maintenance Service unless otherwise agreed in the Order.

## 21. Alarm System Services

- 21.1 This clause applies where Alarm System Services are provided to You and/or specified in an Order.
- 21.2 You acknowledge that the Company has no knowledge of the nature and value of the contents of the premises in which the alarm system is to be installed or of the risks to which the premises and their contents will from time to time be exposed to.
- 21.3 Subject to clause 12.1, although the alarm system is designed to reduce the risks of loss and/or damage, the Company does not represent or warrant that the system may not be neutralised, circumvented or otherwise rendered ineffective by intruders or other unauthorized persons and in such event no liability shall attach to the Company in respect of any loss or damage sustained by You whatsoever. The Company does not guarantee that particular loss, damage or injury can and will be prevented by such use.
- 21.4 Subject to clause 12.1, the Company shall have no liability to You for any consequential or financial loss, damage, costs, expenses or other claims for compensation arising from the Product, and/or Services relating to the Alarm System Services, or from their late arrival or non arrival, or any other fault howsoever caused, except in respect of death or personal injury resulting from the Company's negligence or negligence on the part of its servants or agents.
- 21.5 Subject to clause 12.1 and to the extent permitted by law, the Company shall not be liable in respect of any loss or damage sustained by You arising from burglary, theft, robbery, breaking and entering, fire, malicious damage, flood, riot or commotion or any unauthorised entry where the same is due to the failure of the system to function or to function correctly or to any inadequacy in the design, installation or construction of the system howsoever caused.
- 21.6 If, notwithstanding clauses 21.3, 21.4 and 21.5, liability attaches to the Company in respect of loss or damage howsoever caused and arising from burglary, theft, robbery, breaking and entering, fire, malicious damage, flood, riot or commotion or any unauthorised entry that liability shall be limited to the fees paid by You in respect of the Alarm System Services in accordance with the terms of this Agreement. You agree to indemnify the Company in respect of any such liability incurred by the Company to third parties in excess of the said total amount.
- 21.7 The Company will not accept any liability arising from the withdrawal on notification of the Emergency Response services.
- 21.8 The alarm monitoring services allows for annual routine visits to check that the alarm system is fully operational.
- 21.9 The replacement costs of any item found faulty during maintenance visits or call outs will be chargeable to You (except where required by the ACL to be paid by the Company).
- 21.10 Additional fees may be charged for any and all call-outs that are outside office hours, including weekends and public holidays in accordance with the Order.
- 21.11 The alarm system is intended only to reduce the risks of loss or damage to property and injury to the persons in or on the premises to the extent that this is reasonably practicable by the use of such equipment.

21.12 The Company is not an insurer of the premises, the property or the persons therein which the alarm system is installed to protect. The Company's fees are not related to the value of the premises or the property in or on the premises which You alone are able to ascertain. You undertake to the Company to keep comprehensively insured against all risks such premises and property (and persons in or on the premises).

21.13 You agree:

21.13.1 to provide the Company full and free access to the premises on weekdays during normal working hours and at other times if the circumstances so require to enable the Company to perform its responsibilities;

21.13.2 to use and operate the alarm system with reasonable care;

21.13.3 not to interfere with, alter or tamper in any way with the alarm system or allow any third party to do so;

21.13.4 notify the Company of any defect in or damage to the alarm system;

21.13.5 treat as confidential all information obtained under this Agreement and not discuss details of the alarm system to any third party; and

21.13.6 to notify the Company of any proposed alterations to the premises or changes of use within any area, which will affect the operation of the alarm system.

## 22. Locksmith Services

22.1 This clause applies where Locksmith Services are provided to You and/or specified in an Order.

22.2 Where a request is made by You to supply Locksmith Services that involve the duplication of keys, You represent and warrant that You have obtained the consent of any relevant owner and that You are authorized to make such request.

22.3 You agree to indemnify and keep the Company fully indemnified from any and every liability, loss, damage, cost and/or expense directly or indirectly incurred or suffered by the Company caused by or contributed to by a breach of the warranty in clause 22.2.

22.4 You acknowledge that when the Company provides Locksmith Services in a lockout situation, the Company may be required to cause damage to Your or a third party's property or injury to any person in order to provide the Locksmith Services to gain access. You also acknowledge that the Company is not responsible for such damage or injury and You indemnify the Company for any loss, expenses or claims suffered or incurred by the Company in respect of that damage or injury.