

# CREDIT ACCOUNT APPLICATION

for Element 82 Limited



Date: \_\_\_\_\_ of \_\_\_\_\_ 2009

Full Registered Name of Company: \_\_\_\_\_

Registered Office Address: \_\_\_\_\_

Date of Incorporation: \_\_\_\_\_ Company Number: \_\_\_\_\_

OR

Trading Name if Sole Trader or Partnership: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Amount of Credit Requested \$ \_\_\_\_\_

**Postal address for invoices:** \_\_\_\_\_

Attention: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Physical address for goods Delivery:** \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

Accounts email address: \_\_\_\_\_

Sales/technical email address: \_\_\_\_\_

Directors / Proprietors / Partners (names and addresses):

(1)	(2)
_____	_____
_____	_____
_____	_____

Accountant: \_\_\_\_\_ Ph \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_ Ph: \_\_\_\_\_

Premises: Rented / Leased / Owned (cross out not applicable option)

Trade References:

1. \_\_\_\_\_ Ph: \_\_\_\_\_

2. \_\_\_\_\_ Ph: \_\_\_\_\_

3. \_\_\_\_\_ Ph: \_\_\_\_\_

This information is given in support of our application for a credit account with Element 82 Limited. By signing this account application form, we/I fully agree to and will abide by Element 82 Limited Terms of Trade.

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Authorised signatory

Position in company \_\_\_\_\_ Position in company \_\_\_\_\_

**Please post original copy of this application to PO Box 300 313, Albany, North Shore City 0752 and include the original copy of the terms of trade signed or initialled both sides to ensure the account opening can be processed without delay.**

## TERMS AND CONDITIONS OF TRADE

### 1. ACCEPTANCE

All orders placed by or on behalf of the Customer for the supply of Goods shall be deemed acceptance of these terms and conditions.  
No order accepted by Element 82 Ltd can be cancelled, varied or suspended without Element 82 Ltd's prior written agreement.

### 2. COLLECTION AND USE OF INFORMATION

The Customer authorises Element 82 Ltd to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these terms, or marketing any Goods provided by Element 82 Ltd to any other party.  
The Customer authorises Element 82 Ltd to disclose any information obtained to any person for the purposes set out in clause 2.1.  
Where the Customer is a natural person, the authorities under clauses 2.1 and 2.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 3. PRICE

Where no price is stated in writing, the Goods shall be deemed to be sold at the then current amount charged for such Goods sold by Element 82 Ltd at the time of delivery of the Goods.  
The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Element 82 Ltd between the date of the Contract or request for the supply of Goods (whichever may be applicable) and date of delivery of the Goods.

### 4. PAYMENT

Payment for Goods shall be made in full without deduction or set-off for any reason whatsoever on or before the 20<sup>th</sup> day of the month following the date of invoice ('the due date').  
Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.  
Any expenses, disbursements and legal costs incurred by Element 82 Ltd in the enforcement or attempted enforcement of any rights, powers of remedies contained in these Terms shall be paid by the Customer, including any reasonable solicitor's fees (on a solicitor-client basis) or debt collection agency fees.  
Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

### 5. RISK AND DELIVERY

The Goods remain at Element 82 Ltd's risk until delivery to the Customer. Delivery of Goods shall be deemed complete when Element 82 Ltd or its agent gives physical possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier or other bailee for purposes of transmission to the Customer.  
The time agreed for delivery shall not be an essential term unless the Customer gives written notice to Element 82 Ltd making time of the essence and Element 82 Ltd accepts in writing that time shall be of the essence.  
Where Element 82 Ltd delivers Goods to the Customer by instalments and Element 82 Ltd fails to deliver or supply one or more instalments, the Customer shall not have the right to cancel the order.  
Element 82 Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

### 6. TITLE AND PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

Title in any Goods supplied by Element 82 Ltd passes to the Customer only when the Customer has made payment in full for all Goods provided by Element 82 Ltd and of all other sums due to Element 82 Ltd by the Customer on any account whatsoever.  
The Customer hereby grants Element 82 Ltd a security interest pursuant to the PPSA over the Goods and all of the Customer's present and after-acquired personal property as collateral for all moneys owing by the customer to Element 82 Ltd for the supply of goods and any other moneys that become payable under these Terms.  
The Customer shall without cost to Element 82 Ltd store any Goods supplied by Element 82 Ltd for which full payment has not been made separately from other goods in the possession of the Customer and shall clearly distinguish and identify such goods as Element 82 Ltd's goods.  
The Customer agrees that Element 82 Ltd's rights in respect of the Goods (and proceeds of the same) continue in respect of any Goods with which the Goods supplied become part of or are co-mingled with and extend further to include any moneys wherever held which are the proceeds of any sale of the Goods supplied prior to full payment being made in respect of the same by the Customer to Element 82 Ltd.  
Where the Customer has received payment for the Goods but has not yet paid Element 82 Ltd for the same, the Customer shall receive and hold all such proceeds of the sale in a separate account as a trustee for Element 82 Ltd.  
The Customer shall insure and keep insured the Goods to the full price payable against all risks until payment in full for the Goods has been received by Element 82 Ltd.  
The foregoing provisions shall not entitle the Customer to return the Goods without demand from Element 82 Ltd.  
The Customer gives irrevocable authority to Element 82 Ltd to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if Element 82 Ltd believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Element 82 Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this

action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Element 82 Ltd may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any such repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Element 82 Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

The Customer undertakes that it shall not, except with the prior written agreement of Element 82 Ltd, charge, mortgage, borrow against or otherwise encumber any of the Goods in favour of any third party until the Customer has made payment in full to Element 82 Ltd for the said Goods.

The following shall constitute defaults by the customer:

Non-payment of any sum by the due date.

The Customer intimates that it will not pay any sum by the due date.

Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.

Any Goods in the possession of the Customer are materially damaged while any sum due from the customer to Element 82 Ltd remains unpaid.

The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or landlord distains against any of the Customer's assets.

A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days.

Any material adverse change in the financial position of the Customer.

The Customer hereby waives its rights contained in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

Element 82 Ltd may in its discretion allocate any payment received from the Customer towards any invoice that Element 82 Ltd determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Element 82 Ltd, payment shall be deemed to be allocated in such manner as preserves the maximum value of Element 82 Ltd's purchase money security interest in the Goods.

### 7. LIABILITY

The Customer acknowledges that:

The Goods are being purchased for business purposes and the guarantees contained in the Consumer Guarantees Act 1993 are excluded.

Specifications, descriptions, measurements and other data provided by Element 82 Ltd in relation to the Goods are indicative only and the Goods may differ from the specification provided.

The customer relies upon its own judgement as to the nature, quality and condition of the Goods and the suitability of the Goods for any particular purpose.

To the maximum extent permitted by law, any warranties or conditions imposed on Element 82 Ltd by the Sale of Goods Act 1908, The Fair Trading Act 1986 and any other statute is excluded.

Element 82 Ltd shall not be liable for any loss or damage of any kind whatsoever including loss of profits and consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Element 82 Ltd to the Customer.

### 8. CLAIMS AND RETURN OF GOODS

The Customer shall be deemed to have accepted the condition of the Goods and conformity of the Goods to order unless the Customer notifies Element 82 Ltd within 10 days of delivery of the Goods to the Customer.

Any Goods returned to Element 82 Ltd must be returned within 10 days of delivery, freight paid, in original condition and in original packaging, and complete with packing slip and invoice number details. Goods returned may incur a 15% handling charge.

In the event of damage in transit, the Customer is required to send to Element 82 Ltd a written request for replacement together with the delivery document and evidence that this was endorsed at the time of receipt of Goods that the Goods or any part thereof were damaged prior to unloading.

### 9. MISCELLANEOUS

The Customer shall not sell the Goods via the internet without Element 82 Ltd's prior written consent.

Failure by Element 82 Ltd to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations Element 82 Ltd has under these Terms.

If any provisions of these Terms shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

The Customer shall not assign all or any part of its rights or obligations under these Terms without the prior written consent of Element 82 Ltd.

Where these Terms are at variance with the order or instructions from the Customer, these terms and conditions of trade shall prevail unless Element 82 Ltd accepts such variations in writing.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Designation: \_\_\_\_\_