

Your Wholesale Solution Specialist

Account Application Form

Applicant

Full Company Name		Trading Name	
ABN		ACN	
Business Address			
Postal Address			
Telephone Number		Fax Number	
Email		Website	

Date Established		Entity Type	Sole trader / Partnership / Company
Main contact Person		Title	
Contact Number		Email	
Name of Bank		Branch	
Account Number		BSB	

Director/s Details

Name			
Date of Birth		Drivers License	
Mobile Number		Email	
Residential Address			

Name			
Date of Birth		Drivers License	
Mobile Number		Email	
Residential Address			

Trade References

Company Name		Contact Number	
Business Address		Email	

Company Name		Contact Number	
Business Address		Email	

Company Name		Contact Number	
Business Address		Email	

TERMS AND CONDITIONS OF SALE

All Orders given to ASC Energy Pty Ltd (hereafter ASC ENERGY), ABN No 99 156 499 133 are subject to the following Terms and Conditions.

1. Formation of Contract of Sale of Goods

1.1 These Terms and Conditions supersede all previous terms and conditions imposed by ASC ENERGY and may only be varied in writing by ASC ENERGY.

1.2 Each Order will constitute an offer by the Applicant to acquire Goods from ASC ENERGY upon and subject to the Terms and Conditions and to the exclusion of all other terms and conditions and notwithstanding any qualifications of the Terms and Conditions (including any terms and conditions contained in any purchase Order or other document of the Applicant) unless expressly agreed by ASC ENERGY in writing. Any price lists or sales order given by ASC ENERGY to a Applicant are an invitation to the Applicant, subject to the confirmation returned from the nominated director or account manager listed on the credit application form, in writing, by fax or by electronic data interchange.

1.3 A contract will only be made between ASC ENERGY and the Applicant for the sale and purchase of Goods if and upon the acceptance of the Order by ASC ENERGY PTY LTD by the provision to the Applicant of an Order Confirmation.

1.4 The Contract resulting from the provision of the Order Confirmation cannot be cancelled by the Applicant without ASC ENERGY written consent and ASC ENERGY may at its discretion impose a reasonable cancellation charge.

1.5 These terms and conditions and the Contract constitute the entire agreement between the Applicant and ASC ENERGY ("Agreement").

2. Payment Terms

2.1 The terms of payment are strictly seven (7) days (or such other period as nominated by the supplier herein) from the date of invoice. ASC Energy Pty Ltd ACN 156 499 133 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*) (Supplier) may, at any time, upon the provision of 48 hours' written notice to the Applicant, vary the terms and conditions of trade.

2.2 If the Applicant does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within seven (7) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Applicant, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.

2.3 The Applicant agrees to pay to ASC ENERGY the Price in full upon the delivery of the Goods, unless the Applicant has completed and returned a Credit Application Form and ASC ENERGY has agreed to extend credit to the Applicant. Where credit is not extended to the Applicant, the Applicant agrees to pay the Price in full on or before the date of delivery of the Goods or as otherwise agreed with ASC ENERGY.

2.4 If the Price is not paid in full as and when due in accordance with clause 2.2, then ASC ENERGY shall have the right to charge General Interest Charge (GIC) published by ATO from the due date to the date that the account is paid in full and should the account be referred to a collection agency the Applicant shall pay the collection fee plus legal costs on a solicitor/own client basis.

2.5 The Applicant must check all invoices and advise the Supplier of any errors or omissions within three (3) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.

2.6 Should the Applicant not pay for the Goods that supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier and Applicant from time to time, after issuing a written demand to the Applicant demanding payment within seven (7) days, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.

2.7 The Price is GST exclusive unless stated otherwise. The Applicant must pay to ASC ENERGY any GST which ASC ENERGY is liable to pay in respect of supplies made by ASC ENERGY under these Terms and Conditions, at the same time and in the same manner as first payment is made for the supply to which the payment relates.

2.8 Prices, fees and charges are subject to change without notice.

3. Title and Risk

3.1 The Applicant acknowledges and agrees:

(a) The risk of loss of, or damage to, the Goods will pass to the Applicant on delivery;

(b) Title to any Goods delivered to the Applicant will not pass to the Applicant until the Applicant has paid for them in full; or

(c) ASC ENERGY consents to the Buyer selling or otherwise disposing of the Goods

3.2 Until it has paid for them in full:

(a) the Applicant must keep the Goods separately stored and marked as the property of ASC ENERGY.

(b) ASC Energy must not do any of the following in relation to any of the Goods except where they are sold or otherwise disposed of as contemplated by this agreement:

(i) create or allow any interest in, or dispose or part with possession of, the Goods;

(ii) allow the Goods to be taken outside Australia;

(iii) allow the Goods to become an accession to or commingled with any other property.

(c) The Applicant must notify ASC Energy if anything mentioned in clause (b) occurs immediately upon becoming aware of it.

3.3 If the Applicant sells or disposes of any Goods before it has paid for them in full, the Applicant will hold the proceeds of sale or disposal on trust for ASC Energy to secure payment of the amount the Applicant owes ASC Energy for the Goods. The Applicant must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid over to ASC Energy, and must not mix them with any other amount or use them to pay a debt.

3.4 If the Applicant does not pay ASC Energy the amount the Applicant owes ASC Energy for the Goods when due, the Applicant may retake possession of the Goods. The Applicant may enter any land or premises for the purpose of retaking possession. If ASC Energy retakes possession of any Goods, it may deal with them as it thinks fit.

4. Purpose of Credit

4.1 The Applicant acknowledges and agrees that the credit to be provided to the Applicant by ASC ENERGY is to be applied wholly or predominantly for commercial purposes.

5. Delivery

5.1 The Applicant acknowledges and accepts that any estimated delivery time or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods.

5.2 The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Applicant does not, or is unable to, accept delivery of the goods.

5.3 Any term of the Contract relating to the quantity of Goods is not the essence of the Contract. ASC ENERGY reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately and the Applicant cannot reject Goods on the basis of partial delivery.

5.4 Where Goods remain in the possession of ASC ENERGY after the Delivery Time (including where the Applicant fails for whatever reason to take delivery of the Goods), ASC ENERGY is entitled to charge the Applicant for all Loss occasioned by the Applicant not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.

5.5 The Applicant must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

6. Inspection, Acceptance of Goods and Applicants obligations

6.1 The Applicant has no claim for shortages, defects or any Loss in respect of Goods apparent on inspection unless:

(a) a complaint is made to ASC ENERGY within 3 business days of the Delivery Time specifying the shortage or defect; and (b) ASC ENERGY PTY LTD is, after receipt of the complaint, permitted to inspect the Goods and investigate the complaint.

6.2 If a complaint is not made to ASC ENERGY in accordance with clause 6.1 (a), the GOODS delivered will be deemed to be in accordance with the Contract, and ASC ENERGY will not be held liable for any future Losses regarding the use or application of the Goods, and the Applicant is bound to pay for them accordingly.

6.3 ASC ENERGY will only accept the return of Goods from the Applicant where:

(a) the Applicant has complied with clause 6.2 and ASC ENERGY is satisfied as to the claim by the Applicant; and

(b) the Goods are returned to ASC ENERGY in the same condition as when first delivered to the Applicant; and

(c) the applicant must bear the freight costs when returning the goods.

6.4 Where incorrect Goods are Ordered, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Applicant's requirements, an incorrect account number is used, or an Order is duplicated, the Applicant may after receiving written authority from ASC ENERGY, return the Goods to ASC ENERGY subject to the Goods being returned in the same condition as when first delivered to the Applicant and subject to the Applicant bearing the freight costs of the delivery and return of the Goods. The return is only accepted within 7 business days of the Delivery Time. The applicant acknowledges and agrees that any return will incur a handling and administration charge of 15 percent of the purchase price of the returned goods.

6.5 Where Goods are returned to ASC ENERGY in accordance with the above provisions ASC ENERGY must issue a credit note in respect of any amounts paid by the Applicant in respect of those Goods.

7. Cancellation of Terms of Credit

7.1 ASC ENERGY reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.

7.2 Upon cancellation with notice, all liabilities incurred by the applicant become due and payable to ASC ENERGY within seven (7) days.

8. Corporations

8.1 If the applicant is a corporation, ASC ENERGY warrants that all of its directors have signed this Agreement and that all of its directors may be required to enter into a guarantee and indemnity with ASC ENERGY in relation to the applicant's obligations to ASC ENERGY.

9. Trustee capacity

9.1 If the applicant is the trustee of a trust (whether disclosed to ASC ENERGY or not), the applicant warrants to ASC ENERGY that:

- (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
- (b) the applicant has the right to be reasonably indemnified out of trust assets;
- (c) the Applicant has the power under the trust deed to sign this Agreement; and
- (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising ASC ENERGY.

10. Partnership

10.1 If the Applicant enters into this Agreement as partner, the applicant warrants that all partners have signed this Agreement and that all partners may be required to enter into a guarantee and indemnity with ASC ENERGY in relation to the Applicant's obligation to ASC ENERGY.

10.2 If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising ASC ENERGY. In the case of a change of partners, ASC ENERGY may ask for new guarantors to sign a guarantee and indemnity.

11. Insolvency

11.1 If the Applicant becomes insolvent, the Applicant remains liable under this Agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this Agreement even if ASC ENERGY receives a dividend or payment as a result of the Applicant being insolvent.

11.2 ASC ENERGY is not liable for loss of profit, economic or financial loss, damages, consequential loss, and loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and or services supplied under this Agreement.

12. Liability

12.1 The total liability of ASC ENERGY under these Terms and Conditions is, to the extent permitted by law, expressed in this clause 6 and ASC ENERGY will under no circumstances be liable to the Applicant for any Loss incurred by the Applicant or any other party resulting directly or indirectly out of the supply by ASC ENERGY to the Applicant or out of any breach of ASC ENERGY under these Terms and Conditions or out of the negligence of ASC ENERGY.

13. General

13.1 These Terms and Conditions take effect, are governed by and will be construed in accordance with the law of NSW.

13.2 These Terms and Conditions are subject to change without notice.

14. Jurisdiction

14.1 The Applicant acknowledges and agrees that this Agreement will be governed by the laws of the state in New South Wales, and the laws of the Commonwealth of Australia which are in force in the relevant jurisdiction.

14.2 The Applicant acknowledges and agrees that any contract for the supply of goods or services between ASC ENERGY and the Applicant is formed at the address of ASC ENERGY.

14.3 The parties to this Agreement submit to the exclusive jurisdiction of Court of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

15. Variation

15.1 The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of ASC ENERGY at any time by written notice to the Applicant. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by ASC ENERGY.

15.2 Any proposed variation to these terms and conditions by the Applicant must be requested in writing. ASC ENERGY may refuse any such request without providing reasons either orally or in writing.

15.3 Variations requested by the Applicant will only be binding upon ASC ENERGY, if they are accepted in writing.

16. Consent to register

16.1 The Applicant hereby consents to ASC ENERGY recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by ASC ENERGY to affect such registration.

16.2 The Applicant waives any right or entitlement to receive the notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

17. Entire Agreement

17.1 This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by ASC ENERGY and the Applicant in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

17.2 Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (Original Agreement) between the Applicant and ASC ENERGY, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the term herein which case they will co-exist with the terms herein, and, to the extent of an inconsistency, these terms will prevail.

18 Privacy Act

18.1 The Applicant agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

19 PPSR

19.1 This clause 19 is only applicable where the Applicant has been provided or allowed a credit limit by ASC ENERGY. All the capitalised terms under this clause have the same meaning given to them in the Personal Property Securities Act 2009 (Cth) ("**PPSA**").

19.2 As a result of this Agreement, or the acts or transactions contemplated by this Agreement, ASC ENERGY has or will have Security Interests in goods supplied to the Applicant pursuant to this Agreement ("**Collateral**") and the proceeds of that Collateral.

19.3 The Applicant may, subject to clause 19.4 of this Agreement, sell any goods in the ordinary course of business on the basis that it is under a fiduciary duty to account to ASC ENERGY for the proceeds of such sale. The Applicant may deduct from such proceeds held on trust for ASC ENERGY any amount that is greater than the amount owing to ASC ENERGY at a particular time.

19.4 The power of sale granted by ASC ENERGY under clause 19.3 may be revoked by ASC ENERGY at any time if the Applicant is in default of any payment owing by it to ASC ENERGY and such power of sale shall cease immediately if the Applicant makes any voluntary arrangement with its creditors, becomes subject to an administration order, enters into liquidation, or if bankruptcy, or winding-up proceedings are instituted against it.

19.5 Without limiting other rights of ASC ENERGY and in respect of this Agreement and each Security Interest created pursuant to this Agreement or otherwise in the Collateral and proceeds of it:

- (a) the Applicant has no rights under, or by reference to, sections 96, 125(1), 130, 132(3)(d), 132(4), 135 and 143 of PPSA; and
- (b) the Applicant's rights to the following are expressly excluded (and it unconditionally and irrevocably waives those rights):
 - i. to receive notice of removal of an accession under section 95(1) of the PPSA;
 - ii. to apply for a court order concerning the removal of an accession under section 97 of the PPSA;
 - iii. to receive a notice under section 121(4) of the PPSA;
 - iv. the remedy against ASC ENERGY for a breach of section 92 of the PPSA;
 - v. to object to ASC ENERGY's proposal to purchase or retain collateral under section 137 of the PPSA; and

vi. to redeem collateral under section 142 of the PPSA.

19.6 The Applicant waives its right to receive a copy of any Financing Statement, Financing Change Statement or Verification Statement registered or received by, or available to ASC ENERGY in respect of the Security Interests in the Collateral or its proceeds.

19.7 The Applicant agrees to do all things necessary, including executing all documents and providing all information which ASC ENERGY may require and co-operating fully with ASC ENERGY, to ensure that at all times ASC

ENERGY has a perfected Security Interest in relation to all Security Interests in the Collateral and with the priority available to and sought by ASC ENERGY and including, if applicable, a Purchase Money Security Interest in respect of the Products supplied by ASC ENERGY to the Applicant pursuant to this Agreement.

19.8 The Applicant agrees that, until all moneys owing to ASC ENERGY are paid in full, it shall not grant any other Security Interest in the Collateral except as permitted by ASC ENERGY in writing.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this account application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

Name (print)		Witness name (print)	
Signature		Signature	
Position		Date	
Date			

Name (print)		Witness name (print)	
Signature		Signature	
Position		Date	
Date			

PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (Act).

2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.

3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.

4. The Supplier may collect personal information about the Applicant and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.

5. The Applicant and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.

6. The Supplier may collect, and may already have collected, Information from the Applicant and/or Guarantor(s), other credit providers, credit reporting bodies and OTHER third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to,

continuing to extend credit to or extending further credit to the Applicant and/or Guarantor(s) or their related bodies corporate.

7. The Applicant and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Applicant and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier notifies the Applicant and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.

8. The Supplier may disclose Information to, and about them and the Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.

9. A full copy of the Supplier's privacy policy and credit reporting policy can be obtained by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.

10. The Applicant and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Applicant and/or Guarantor(s) are directors or guarantors of a applicant, by not taking steps to prevent the applicant from continuing to trade with the Supplier after receipt of this statement.

DEED OF GUARANTEE & INDEMNITY

To ASC Energy Pty Ltd ABN 99 156 499 133 and its related bodies corporate (supplier)

Guarantor's name:	Address:
Guarantor's name:	Address:

(Guarantors) hereby convent and undertake and if more than one, jointly and severally, as follows.

1. Jurisdiction

1.1 The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in the relevant jurisdiction.

1.2 The parties to this guarantee and indemnity submit to the exclusive jurisdiction of the courts of the laws of New South Wales, and the relevant federal courts and courts competent to hear appeals from those courts.

2. Consideration

2.1 In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

3. Guarantee and indemnity

3.1 The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.

3.2. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.

3.3 Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

3.4 The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

3.5 This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.

3.6 This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the

Guarantors or any of the Guarantors be in any way prejudiced or affected by:

- any other security taken by the Supplier from the Applicant or from any other person;
- any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
- by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
- any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

4. Right of subrogation

4.1 In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.

4.2 In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

5. Insolvency of Applicant

5.1 No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

6. Costs

6.1 The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:

- the account of the Applicant;
- this guarantee and indemnity;
- any other security in respect of the indebtedness of the Applicant to the Supplier;
- the preparation, completion and stamping of this deed; or
- the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed; and the same will be part of the monies secured by this deed.

6.2 The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.

6.3 The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

7. Variation

7.1 The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

7.2 The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

8. Severance

8.1 If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

9. Security/charge

9.1 The Guarantors charge in favour of the Supplier all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.

9.2 The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to clauses 3 and 4.

9.3 This guarantee and indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.

9.4 Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or

other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

10. Personal Property Securities Act

10.1 For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.

10.2 The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

11. Service of notices

11.1 The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Guarantors or the Guarantors' authorised representative.

12. Privacy Act

12.1 The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

Guarantor's signature _____

Full Name _____

Position _____

Date _____

Witness signature _____

Full Name _____

Date _____

Guarantor's signature _____

Full Name _____

Position _____

Date _____

Witness signature _____

Full Name _____

Date _____

ASC Energy Pty Ltd Office Use Only:
Credit Limit Approved
Signature

Credit Terms Approved
Date of Approval