

# CREDIT / CASH APPLICATION FORM

Ultimate Positioning Group Pty Ltd  
ABN 12 135 812 903 and its related Bodies Corporate



UPG Sales Representative: \_\_\_\_\_

State you wish to trade in (tick) NSW QLD/NT VIC/TAS SA ACT

Cash Credit

**WARNING: If you do not understand this document, you should seek independent legal advice. Please do not use correction fluid or tape as this is a legal document. Any corrections should be crossed out and initialed.**

## Section 1 - Applicants details (Enter all details relevant to your business)

Name (Company Name/Partnership/Sole Trader) ACN

Trust Name (if a Trust)

Trading as (Registered Business Name) ABN

Company Sole Proprietor Partnership Trustee Government/Statutory Authority

Nature of Business

Date of Company registration (dd/mm/yy) / /

Street address (not a PO Box)

State Postcode

Postal address (if different)

State Postcode

Telephone Number Fax Number for invoices  
Mobile Number Email Address for Invoices

## Partner, Sole Trader, Director or Trustee Details

	Names of Directors (if company), Partnership or Sole Trader	Residential Address	Date of Birth (dd/mm/yy)
1			/ /
2			/ /
3			/ /
4			/ /

## Section 3 - Details of Assets & Liabilities (please provide details of all assets and liabilities owned by the Applicant and Guarantors)

Assets		
	Address or Description	Value(s)
1		
2		
3		
4		

Liabilities/Loans		
	Description	Value(s)
1		
2		
3		
4		

## Section 4 - Credit Account Terms and Conditions

### 1. Definitions and interpretation

**Associated Entities** has the same meaning as in the Corporations Act 2001.

**Conditions** means these Credit Account Terms and Conditions.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Customer** means the party making this application for credit.

**Goods** means any goods supplied by the Supplier being Geospatial positioning equipment, drones, GPS devices, machine guidance devices, software and software licences or any other building or construction products and all related or ancillary goods.

**Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

**Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

**New UPG Entity** means an entity that becomes a Related Body Corporate of Ultimate Positioning Group Pty Ltd ABN 12 135 812 903 after this application for credit is made by the Customer.

**Real Property** means all real property interests held by the Customer now or in the future.

**Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.

**Services** means any and all services provided by the Supplier, including training services, software subscription services, data preparation services and all related or ancillary services.

**Supplier** means, in connection with the supply of any Goods or Services, the UPG Group Company making the supply to Customer.

**Supplier Ts&Cs** means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer.

**UPG Group Company** means Ultimate Positioning Group Pty Ltd or Related Body Corporate of Ultimate Positioning Group ABN 12 135 812 903 or Associated Entities including Sitech Construction Systems Pty Ltd ABN 52 135 939 507 and BuildingPoint Australia Pty Ltd ABN 77 165 100 327.

Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included

### 2. Structure of this document

(a) These Conditions are intended to regulate key trading terms including the extension of credit in connection with the supply of Goods or Services by UPG Group Companies to the Customer.

(b) The terms set out in Part A of these Conditions are incorporated by reference as part of the Supplier Ts&Cs. Those terms are legally binding between the Supplier and the Customer and should be read together with the Supplier Ts&Cs. To the extent of any inconsistency, the Supplier Ts&Cs (excluding the incorporated Part A of these Conditions) prevail over these Conditions.

### PART A

### 3. Customer obligations

(a) These Conditions apply if the Supplier accepts any order for Goods or Services or both from the Customer, whether for cash or on credit. The Customer has

no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.

(b) If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to another UPG Group Company when due, suffers an Insolvency Event or makes any misrepresentation to a UPG Group Company, the balance of the Customer's account to the Supplier will become due and payable immediately.

(c) The Customer agrees that the Supplier:

- (i) may obtain a consumer credit report containing information about the customer from a credit reporting agency for the purpose of:
  - (A) assessing the Customer's application for commercial credit;
  - (B) collecting overdue payments relating to commercial credit owed by the Customer;

(ii) may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency;

(d) The Customer agrees that it must:

- (i) pay, without any deduction or set-off, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or, if credit terms are offered, within 30 days from the end of the month in which the invoice is issued.
- (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods or Services supplied to the Customer.
- (iii) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods or Services supplied.

### 4. Overdue accounts and security

(a) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

(b) The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 4(c).

(c) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to the Supplier.

(d) Without limiting the generality of the charge in clause 4(c), the Customer, agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier, (including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 (NSW) or of any analogous implied term under the applicable governing law) to perfect the charge given in clause 4 (c) including registering a mortgage security over any Real Property. The Customer appoints the Supplier to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.

(e) The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.

## CREDIT / CASH APPLICATION FORM, (CONTINUED)

(f) A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

### 5. Retention of title

- (a) The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply.
- (b) Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such goods or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- (c) Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- (d) The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- (e) This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

### 6. Security interest

- (a) The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- (b) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.
- (c) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.
- (d) For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- (i) The Customer hereby waives any rights the Customer may otherwise have to receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
  - (ii) apply to a Court for an order concerning the removal of an accession under section 97
  - (iii) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135
  - (iv) receive a copy of a verification statement confirming registration of a

financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.

- (e) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

### 7. Risk

Risk in relation to any Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at the Supplier's premises on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.

### 8. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Supplier Ts&Cs or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

### 9. Limitation of liability

To the maximum extent permitted by law and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier Ts&Cs, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Supplier Ts&Cs or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) the Supplier shall have no liability to the Customer for any Consequential Loss;
- (b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9 (b) do not apply to the extent that any Loss is directly attributable to:
  - (i) the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Ts&Cs or negligence; or
  - (ii) fraud by the Supplier.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

### 10. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities)), is limited to, at the option of the Supplier, one or more of the following:

- (a) 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) equivalent goods; or
- (e) the payment of the cost of having the goods repaired.

To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:

- (a) the supply of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

### 11. GST

If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

**Section 5 - Acknowledgement**

**Who must sign this Agreement on behalf of the Customer:**

**For Companies:** Where there is only one director for the company then that person must sign; where there are two or more directors for the company then 2 Directors or a Director + Company Secretary must sign.

**Sole Traders operating under their own name or under a business name:** The individual.

**Partnerships:** All Partners of the Partnership.

Where this is not possible please contact the UPG Office nearest you – details as per mailing instruction on Personal Guarantee and Indemnity Agreement - page 2 of 2.

**The Customer agrees to be bound by the Credit Account Terms and Conditions stated in Section 4 of this Agreement.**

**Signatory**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Witness Executed by Independent Witness**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Signatory**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Witness Executed by Independent Witness**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Signatory**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Witness Executed by Independent Witness**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Signatory**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Witness Executed by Independent Witness**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

# PERSONAL GUARANTEE AND INDEMNITY AGREEMENT

Ultimate Positioning Group Pty Ltd ABN 12 135 812 903 and its related Bodies Corporate

**WARNING:** THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.

**IMPORTANT:** As part of your application for credit, this Personal Guarantee and Indemnity Agreement must be completed and signed by all Directors, Sole Traders and Business Partners in the presence of Independent Witnesses (not Spouse/Partners or Family Members). Spouses/Partners of all Directors, Sole Traders and Business Partners must sign as Guarantors in the presence of Independent Witnesses where there is joint ownership of personal assets.

I/We, the **Guarantor(s)**, \_\_\_\_\_  
 \*Insert Guarantor(s) name as applicable

have requested the supplier to supply \_\_\_\_\_  
 Insert Company Name/Partnership/Sole Trader

Trust Name (if a Trust) \_\_\_\_\_  
 Insert Trust Name

Trading as (if applicable) \_\_\_\_\_  
 Insert Registered Business Name

(the "Customer") of \_\_\_\_\_  
 Insert Street Address (not a PO Box) State Postcode

With Goods & Services on Credit

\*Guarantor(s) names should agree with those on Certificate of Guarantee - Executed as Deed on page 2 of 2.

## Should the Supplier elect to Supply Goods or Services:

1. I/We guarantee payment to the Supplier of the whole price charged by the Supplier for Goods or Services supplied to the Customer from time to time, without any deduction or set off whatsoever. I/We also guarantee payment of any other monies now or in the future owing by the Customer to the Supplier.
2. I/We indemnify the Supplier against all costs, losses and expenses which the Supplier incur as a result of any default by the Customer. I/We agree to pay any stamp duty assessed on this Guarantee.
3. My/Our guarantee and indemnity under this Guarantee is a continuing guarantee and will not be affected:
  - (a) if the Supplier grants any extension of time or other indulgence to the Customer or varies the terms of the Customer's account (even if this increases my/our liability under this Guarantee)
  - (b) by the release of any of the Guarantors or if this Guarantee is or becomes unenforceable against one or more of the Guarantors.
  - (c) any payment by the Customer being later avoided by law, whether or not I/we have been given notice of these matters.
4. I/We agree that an application for credit made by the Customer is deemed to have been accepted from the date of the first invoice by the Supplier to the Customer and, without further notice to me/us, this Guarantee will extend to all liabilities from the Customer to that Supplier.
5. This Guarantee extends to credit given to the Customer in the future by a company which is not now, but at the time such credit is extended, a UPG Group Company.
6. This Guarantee may be withdrawn by the Guarantor(s) on expiry of 14 days following written notice of withdrawal being delivered to both the Supplier's Company Secretary at the Supplier's registered office. This Guarantee will continue in force in respect of all debt incurred up to the date of withdrawal.
7. (a) As security for the obligations and liabilities of the Guarantor(s), I/we charge for the due and punctual payment and performance of those obligations and liabilities, all of my/our legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all Real Property in favour of the Supplier.
  - (b) Without limiting the generality of the charge in clause 8(a), I/we agree on request by the Supplier to execute any documents and do all things reasonably required by the Supplier to register a mortgage security over any Real Property. In the event that the Guarantor(s) fails to deliver the requested documents, the Guarantor(s) hereby appoints the Supplier to be the Guarantor's(s') lawful attorney for the purposes of executing and registering such documents. I/We indemnify the Supplier against all costs and expenses incurred by the Supplier as the case may be in connection with the preparation and registration of such mortgage documents.
  - (c) I/We consent unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.
  - (d) We agree to advise the Supplier in writing of the occurrence of any Insolvency Event, any change in my/our name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of my/our gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring.
- (e) If any payment made by or on behalf of the Customer is alleged to be void or avoidable by any liquidator or like officer of the Customer under any law related to insolvency, I/we indemnify the Supplier against any costs or losses it may incur in connection with such claim. This indemnity shall continue to apply notwithstanding any withdrawal under clause 6.
- (f) If the charge created by clause 7(a) is or becomes void or unenforceable, it may be severed from this Guarantee without any effect on the Supplier's rights against the Guarantor(s).
- (g) If the Guarantor(s) is a trustee of a trust, the Guarantor(s) enters into this agreement in both the Guarantor's personal capacity and as trustee of that trust.
8. Any condition or agreement under this Guarantee by or in favour of two or more persons is deemed to bind them jointly and severally, or be in favour of each of them severally. If the Guarantor comprises more than one person the Supplier may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's obligations as the Supplier may choose in its absolute discretion, and the Supplier is not to be obliged to make any claim against all the persons comprising the Guarantor.
9. Until the whole of the Customer's obligations have been paid or satisfied in full, the Guarantor must not (except with the prior written consent of the Supplier) either directly or indirectly, and either before or after the winding up or bankruptcy of the Customer, or any person, take any step to recover or enforce a right or claim against the Customer relating to any sum paid by the Guarantor to the Supplier under this Guarantee including without limitation proving or claiming in competition with the Supplier so as to diminish any distribution, dividend or payment which, but for the proof or claim, the Supplier would be entitled to receive pursuant to the winding up or bankruptcy of the Customer.

The definitions in the Credit Account Terms and Conditions shall apply in this Guarantee, except that "Real Property" shall mean all real property owned by the Guarantor(s) now or in the future, solely or jointly. Also, singular words include the plural and vice versa and references to any party to this Guarantee, include that party's executors, administrators, substitutes, successors or permitted assigns.

**IMPORTANT:** Spouses/Partners of all Directors, Sole Traders and Business Partners must sign as Guarantors in the presence of Independent Witnesses where there is joint ownership of personal assets.

**Certificate of Guarantee - Executed as a Deed**

**Acknowledgement**

By signing below as Guarantor(s), I/we certify that I/we understand the terms of this Guarantee. In particular, I/we understand that if the Customer fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me/us personally. In such case, the Supplier may, amongst other recovery rights, take charge over any Real Property. I/we certify that I/we have had the opportunity of taking independent advice in relation to the meaning and effect of this Guarantee.  
All Directors, Sole Traders, Business Partners and any other Guarantors complete, print and sign below as Guarantors in the presence of Independent Witnesses (not Spouses or Family Members).

**Signatory**

Name	
Address	
Signature	

**Witness Executed by Independent Witness**

Name	
Address	
Signature	
Date	/ /

**Signatory**

Name	
Address	
Signature	

**Witness Executed by Independent Witness**

Print Name (in block letters)	
Position	
Signature	
Date	/ /

**Signatory**

Name	
Address	
Signature	

**Witness Executed by Independent Witness**

Name	
Address	
Signature	
Date	/ /

**Signatory**

Name	
Address	
Signature	

**Witness Executed by Independent Witness**

Name	
Address	
Signature	
Date	/ /

**Mailing Instructions**

For your application to be processed ensure you have completed and signed both the Credit Application Form and the Personal Guarantee and Indemnity Agreement. Please return all original signed and witnessed documents to UPG, 33 Allison Street, Bowen Hills Qld 4006