

CREDIT 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 VIC/TAS SA/NT ACT

WARNING: If you do not understand this document, you should seek independent legal advice.

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) / / Credit Limit Requested: \$

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

Section 2 - 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)

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 T&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 setoff, 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 of the invoice date during which the goods or services were supplied or provided.
 - (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 may 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.

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; and
 - (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 T&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 T&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 T&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 T&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 Office nearest you.

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)	
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