HEAD OFFICE: 149 Hutt Park Road Gracefield
Mail Address – P O Box 36-026 Moera, Lower Hutt 6009
Telephone: 04 568 4264 Email: **accounts@exide.co.nz**

COMMERCIAL TRADING ACCOUNT

Application for Credit is with:

EXIDE ❑ **MARSHALL** ❑ *Tick One ✓*

APPLICATIONS TO BE COMPLETED IN FULL

To be completed by SALES DIVISION

CUSTOMER #	.....	CORP #	.....
SALESMAN #	.....	REGION	.....
SALES TERRIT	.....	OUTLET	.....
BUS CHAN	.....	BUS SEG	.....
AUTO / IND	.....	PRICE SCH	.....
W/HOUSE	.....	LABEL	.....
EXIDE CLUB	.....	DEL/FIS	.....

1. TYPE OF BUSINESS – *(Please tick one box)*

(a) Company ❑ Trust ❑ *Please complete Items 2, 5, 6*

(b) Sole Trader ❑ Partnership ❑ *Please complete Items 3, 4, 5, 6*

PLEASE PRINT IN ALL SECTIONS

2. DETAILS OF COMPANY OR TRUST:

COMPANY NAME: .....

TRADING NAME: .....

BUSINESS ADDRESS: .....
(Full street address)
..... Postcode .....

POSTAL ADDRESS: .....
(If different from business address)
..... Postcode .....

R/No ..... TEL: ..... FAX: .....

FULL NAME AND ADDRESS OF DIRECTORS/TRUSTEES:
(Hereinafter referred to as "Applicant/s")

	Surname	First Name	Middle Name/s	Driv.Lic.No	Date of Birth
I					
Ii					

Full Residential Address
Postcode Home Phone No: ( )

Full Residential Address
Postcode Home Phone No: ( )

3. DETAILS OF SOLE TRADERS OR PARTNERSHIPS:

FULL TRADING NAME: .....

REGISTERED ABN: ..... REGISTERED BUSINESS No .....

BUSINESS ADDRESS: .....
(Full street address)
..... Postcode .....

POSTAL ADDRESS: .....
(If different from business address)
..... Postcode .....

TEL: ..... MOBILE: ..... FAX: .....

4. FULL NAME AND ADDRESS OF EACH PROPRIETOR OR PARTNER:

(Hereinafter referred to as "Applicant/s")

i	Surname	First Name	Middle Name/s	Driv.Lic.No	Date of Birth
	Full Residential Address Postcode: Home Phone No: ( )				
ii	Surname	First Name	Middle Name/s	Driv.Lic.No	Date of Birth
	Full Residential Address Postcode: Home Phone No: ( )				

Has any applicant mentioned above ever been bankrupt, insolvent or made any arrangement with or assignment for the benefit of his/her creditors?	YES / NO
If YES, Provide brief details:	

5. GENERAL INFORMATION:

PURCHASE ORDER REQUIRED YES/NO ……. BACK ORDER FACILITY YES/NO …….	DATE ESTABLISHED:	REQUIRED MONTHLY PURCHASES $……
EMAIL ADDRESS OR FAX No: FOR STATEMENTS ……..…		
SHIPMENT ADDRESS FOR DELIVERY OF GOODS (Full street address) SUBURB/TOWN: Postcode:		

6. TRADE REFERENCES: *NOTE: These should be Commercial Trading Accounts.* ***C.O.D transactions are not acceptable***

i	SUPPLIER NAME: A/c No:	
	PHONE No: FACSIMLE No:	ADDRESS:
ii	SUPPLIER NAME: A/c No:	
	PHONE No: FACSIMILE No:	ADDRESS:
iii	SUPPLIER NAME: A/c No:	
	PHONE No: FACSIMILE No:	ADDRESS:

(Office Use)

Reference Result i) ---------- ii) ---------- iii) ----------

VEDA ADVANT REPORT ---------- **D & B AUST REPORT** ----------

Branch Manager Approval ----------

Credit Manager Approval ---------- Credit Limit $ ----------

Date of Approval ----------

LVR 10/2010

TERMS AND CONDITIONS OF SALE

1 Interpretation

Unless inconsistent with the context:
"Agreement" shall mean and include the terms and conditions herein and on the trace hereof.
"Company" shall mean and include Exide Technologies Limited (1040136).
"Customer" means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Company.
"Goods" means the Goods and/or services supplied by the Company pursuant to this Agreement.
"GST" has the same meaning as defined in the Goods and Services Tax Act 1985 and amendments.
"RCTI" means a Recipient Tax Invoice which is issued by the Company for Core return by a Customer.

2 Exclusion of inconsistent terms

Any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions (including any statement by the Customer that the Customer's terms and conditions shall prevail) are expressly excluded. Subject to Clause 11, this Agreement constitutes the entire agreement between the parties.

3 Formation of Contract

A contract shall only be, or be deemed to have been entered into between the Company and the Customer for the sale of Goods when, upon an order having been placed with the Company for Goods, that order has been accepted by the Company either in writing or by conduct.

4 Prices

4.1 "Price" means, unless stated to the contrary, the price for which a Good (or Goods) is sold pursuant to the Terms and Conditions of Sale and is the amount payable by the Customer, inclusive of any GST payable by the Company in respect of the sale.

4.2 Prices are subject to change without notice. List and retail prices are recommended only.

5 Payment

5.1 Unless otherwise agreed by the Company in writing, **payment for all Goods shall be made on or before the 20th day of the month following the month in which the Goods are invoiced ("the due date for payment").** Punctual payment is agreed to be of the essence of this Agreement.

5.2 Breach by the Customer of Clause 5.1 shall entitle the Company to:-

(a) require payment of all invoices rendered by the Company to the Customer within seven days of the Company demand.

(b) terminate this Agreement without prejudice to any antecedent rights accruing to the Company;

(c) recover liquidated damages on any amount outstanding of an amount equal to two per cent (2%) of the amount for each month or part of a month from the due date until the date of payment in full;

(d) add to the Customer's account and require payment of all expenses incurred as a consequence of the actions taken by the Company to recover outstanding monies from the Customer.

(e) Add to the Customer's account a service fee of $50.00 (excluding GST) together with all other charges incurred by the Company in respect of any cheque not met upon presentation.

5.3 In respect of any proceedings in any Court of competent jurisdiction, a certificate signed by the credit manager on behalf of the Company stating the quantum of the debt owed by the Customer to the Company shall be deemed to be conclusive proof of the quantum of the debt owed by the Customer to the Company. It is policy of the Company to list default accounts with Veda Advantage.

6 Supply and Delivery & Consumer Guarantees Act 1993

6.1 The Company reserves the right to:-

(a) withhold supply to the Customer where:-

(i) the Company has insufficient Goods to fulfil the order;

(ii) the Goods ordered have been discontinued; or

(iii) the Company has determined in its absolute discretion that credit should no longer be extended to the Customer;

(b) deliver by instalments and such right shall not entitle the Customer to:-

(i) terminate or cancel this Agreement; or

(ii) claim any loss or damage howsoever arising.

6.2 The Goods shall be at the Customer's risk from the time of delivery to the Customer or its appointed agents.

6.3 Claims for shortages in delivery or damage to Goods may only be made within three business days from the date of delivery.

6.4 Requests for proof of delivery documentation are available for 90 days from month of invoice. The Customer acknowledges that requests for proof of deliveries in excess of 90 days will be subject to an administration fee of $30.00 (inclusive of GST) for each document plus any other expenses incurred by the Company.

6.5 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of trade/business (which cases are specifically excluded).

7 Governing Law

(a) The laws of New Zealand govern our trading and these Terms and Conditions of Sale.

(b) You agree with Exide Technologies Limited to submit to the non-exclusive jurisdiction of the Courts of New Zealand and agree that any legal proceedings may be heard in those Courts.

8 **Ownership of Goods**

(a) The Company shall remain the beneficial and legal owner of all Goods, the subject of this contract and all other goods supplied by the Company to the Customer until all monies owing to the Company, pursuant to this contract or otherwise, have been paid in full and all cheques and all other negotiable instruments have been cleared or the Goods have been sold to a third party in accordance with **clause (b) and (e) of section 8.**

(b) Where legal and beneficial title in the Goods remains with the Company, the Customer may sell the Goods but only as a fiduciary agent of the Company.

(c) Until legal or beneficial title in the Goods passes to the Customer in accordance with **clause (a) of section 8** the Customer is bailee of the Goods and must insure the Goods for their full insurable value (whichever is the higher) and must not encumber the Goods in any way.

(d) Until full payment is received by the Company for the Goods, the Customer must allow the Company, or its representatives to enter the Customer's premises (or the premises of any appointed franchised outlet or agent where the Goods are located) and without liability for any resulting trespass or damage, to do anything necessary to inspect or take possession of the Goods.

(e) If the Customer disposes of any Goods whilst they remain the property of the Company, **the Customer holds the proceeds of the sale on trust for the Company up to the amount it owes the Company in respect of those Goods and all other invoiced amounts that are overdue to the Company and shall pay the proceeds of the monies held on trust to the Company within seven days of the demand.**

TERMS AND CONDITIONS OF SALE

8 (f) Personal Property Securities Act 1999 ("PPSA")

Upon assenting to these terms in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purpose of the PPSA and a security interest is taken in all Goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties relationship.

The Customer agrees to sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register and will indemnify, and upon demand reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register or releasing any Goods charged thereby and not register a financing change statement or a changed demand without the prior written consent of the Company.

To give the Company within 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, or business practice) and immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

The Company and the Customer agree that nothing in the sections 114(1) (a), 133 and 134 of the PPSA shall apply to these terms and conditions.

The Customer waives its rights as a debtor under sections 116, 120 (2), 121, 125, 126, 127, 129 and 131 of the PPSA.

Unless otherwise agreed in writing by the Company the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

9 Waiver

The waiver by the Company of any breach by the Customer of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

10 Returns

10.1 The Company reserves the right in its complete discretion to refuse to accept any returns whatsoever.

10.2 If the Company for any reason elects to take back any of the Goods, such return shall be on terms as the Company is willing to accept and a re-stocking fee of not less than 10.00% of invoice value (inclusive of GST) shall apply.

10.3 Goods returned shall be at the Customer's expense.

10.4 Goods returned must have been purchased from the Company, in a saleable condition and accompanied by the relevant invoice number.

10.5 No credit will be issued for Goods returned after 7 days from receipt or for Goods supplied specially to the Customer's requirements.

10.6 The Customer shall be deemed to have been given notice under section 15 of this agreement of any change to the Company's returns policy.

11 Implied Terms

11.1 Except as required by statute of this agreement all implied conditions and warranties are hereby excluded. Subject to the extent that such conditions and warranties cannot be excluded under statute, the Customer's sole and exclusive remedy for any breach of a condition, warranty or undertaking hereunder (whether direct, indirect, special or consequential) shall be limited at the sole discretion of the Company to any of the following;-

(a) in the case of Goods:-
- i) the replacement of Goods or supply of equivalent Goods;
- ii) the repair of the Goods;
- iii) the payment of the cost of replacing or of acquiring equivalent goods; or
- iv) the payment of the cost of having the Goods repaired; and

(b) in the case of Service:-
- i) the supply of services again;
- ii) the payment of the cost of having services supplied again.

11.2 Except as required by statute the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Company or any of its employees, servants or agents. For the purpose of the foregoing "consequential loss" shall include, but not be limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of Goods or services.

11.3 Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods or services pursuant to this Agreement or any relevant Act which by law cannot be excluded, restricted or modified.

12 Customer Guarantee

(a) to cover anticipated debt exposure, the Personal Guarantee is a condition of this agreement. This agreement is not transferable.

13 Changes to the Particulars of the Proprietors or the Business

13.1 The Customer hereby undertakes to advise the Company within 7 days by certified mail of any actual or proposed change in:-

(a) the address of the business and the address at which the Goods will be located (if it differs to the business address);

(b) the trading name of the business;

(c) the person(s), the Directors, the Trustee or the partnership conducting the business;

(d) the proprietorship of the business in that the business is converted into a trust or company or is sold to a trust or company.

13.2 The Customer further accepts and agrees that where such a change occurs the Company will require that a new application for credit facilities will be sought and considered and the Customer will sign all documents and do all acts and things appropriate to such new application for credit facilities.

14 Sale or Return of Consignment Stock

(a) The Customer must maintain all SOR Consignment Stock in a saleable condition and will keep all charged batteries in a fully charged condition.

(b) Any goods lost, destroyed or damaged shall be deemed to be sold by the Customer and will be invoiced to the Customer at the list Price then operating. The Customer must obtain at its own cost and maintain insurance cover during the currency of the SOR Consignment Stock agreement to cover all of the stock provided by the Company.

(c) The insurance must be in force from the commencement date of the SOR agreement and must continue in force until the agreement is terminated. Payment of all goods is subject to section 5.1 of this agreement.

15 Notices

All notices between the Company and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post, facsimile or e-mail to the last known address of the Company or the Customer, whichever may apply. Notices shall be deemed to have been delivered three (3) days after mailing; and in the case of facsimile or email upon completion of the transmission. The Customer hereby charges all of his/her or its property both real and personal with the amount of any indebtedness to the Company and such charge is separate and distinct from the reservation of title to the Goods referred to above.

ACKNOWLEDGMENT

1 The applicant acknowledges that all contracts for the sale of Goods by the Company shall be strictly subject to the Terms and Conditions of Sale unless it receives written notice to the contrary.

2 The Customer declares that the credit granted by the Company is used wholly or predominantly for business or investment purposes.

Privacy Act 1993.
The Customer acknowledges that the Company may:

(a) obtain from sources including my/our referees, the public domain and credit reporting agencies, a credit report containing consumer credit information about me/us for the purpose of the Supplier (Company) to:
  (i) collect overdue payments in respect of commercial credit provided to me/us and
  (ii) assess my/our application for commercial credit on an on-going basis

(b) use the Supplier (Company) Trader Insurer to obtain from a credit reporting agency a credit report containing consumer information about me/us to assess the risk of providing insurance to Supplier (Company) in relation to my/our application for commercial credit with Supplier (Company).

(c) give to and seek from any credit provider in this Application including your representatives and guarantors, Exide's service providers, including mail houses, delivery companies, debt collectors, financial institutions and professional advisers or those named in a credit report issued by a credit reporting agency information about my/our credit arrangements, including such information about my/our credit worthiness, credit standing, credit history or credit capacity, that credit providers are allowed to give or receive from each other under the Privacy Act 1993. A National Privacy manual sets out the ways in which Exide Technologies Limited handles personal information. A copy of our National Privacy manual is available for viewing by any client on request.

(d) the Customer acknowledges that the authorisations contained in this document will continue to remain in full force and effect until all credit facilities cease to be made available and all amounts owing to the Company are paid in full.

(e) where you are providing personal information the Company seeks assurance from you that the consumer information forwarded to the Company has been collected with the knowledge and consent of the person whose personal information has been provided.

(f) The information provided will be used to assess your credit worthiness. You have the right to access and correct this information subject to the provisions of the Privacy Act 1993.

3 In the event that this application is approved, it is unconditional that such credit is extended to the Customer named in the said application and that the said Customer will be jointly and severally liable for any debt incurred under this Agreement and agree to abide by the Terms and Conditions of Sale.

4 The Customer acknowledges that this agreement will be scanned as an image and then the image will be written to CD-ROM disk. Should it be necessary to prove the existence of this document, the Customer agrees that an image retrieved from the relevant CD-ROM and certified by the employee of the Company as being an image retrieved from the relevant CD-ROM and printed into hard copy form shall be deemed to be conclusive proof of the existence of this document.

DATED this day of in the year

....

Director/Partner/Proprietor Name **Signature**

....

Director/Partner/Proprietor Name **Signature**

In the presence of

Witness Name ..... **Witness Signature**.....

Witness Address .....

Terms: Payment must be received on or before the 20th day of the month following the month of invoice.

SEE OVER: COMPLETION OF THE PERSONAL GUARANTEE.

SUBMISSION OF THIS APPLICATION BY FACSIMILE NOT ACCEPTABLE
Postal Address: Post Office Box 36-026 Wellington Mail Centre Lower Hutt 5045

PERSONAL GUARANTEE

This deed is made on the date set out below between Exide Technologies Limited (Company Number 1040136) (hereinafter referred to as "you") and the guarantor set out in the schedule hereto ('the Guarantor"). The Customer means and includes any person, company, partnership or other entity that makes this Application for Credit

The Guarantor **HEREBY JOINTLY AND SEVERALLY AGREES** with you as follows:

1. To be answerable and responsible for and to guarantee to you the due payment by the Customer for all such Goods and services as you may heretofore have supplied or which you may hereafter from time to time at its request supply to it notwithstanding that we shall not have notice of any neglect or omission on its part to pay for such Goods or services or both according to the terms agreed on between you and it.

2. That this Guarantee shall constitute a continuing obligation to you for the whole debt which shall be contracted by the Customer with you in respect of Goods and services or both supplied or to be supplied to it as aforesaid.

3. All dividends compositions and payments received by you from the Customer whether in liquidation or otherwise shall be taken and applied by you as payments in gross and our rights to be subrogated to you in respect thereof shall not arise until you shall have received the full amount of all your claims against it and this Guarantee shall be a security to you for the payment of any ultimate balance which may remain due to you in respect of Goods or services to be supplied to the Customer as aforesaid.

4. You may at any time or times at your absolute discretion and without giving any notice whatsoever to us refuse further credit or supplies of Goods or services to the Customer and grant to it or to any drawers, acceptors or endorsers of bills of exchange promissory notes or other securities received by you from it or on which it may be liable to you at any time or other indulgence and compound with it or them respectively without discharging or impairing our liability under this Guarantee.

5. This Guarantee shall be enforceable against **US JOINTLY AND EACH OF US SEVERALLY** notwithstanding that any negotiable or other securities referred to herein shall at the time of proceedings being taken against us or any of us on this Guarantee be outstanding or in circulation.

6. It is expressly declared that notwithstanding the fact that this Instrument may be intended or expressed and given by more than one person the same shall in fact be a valid and effectual instrument binding against such person or persons as shall execute the same forthwith upon their execution thereto and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact execute the same.

7. In order to give effect to this Guarantee we declare that you shall be at liberty to act as though we were the principal debtor and we and each of us hereby waive all and any of our rights as surety which may at any time be inconsistent with any of the above provisions.

8. We may determine our liability only as to further credit extended to the Customer by giving prior written notice one month before the date of such determination given to you or your duly authorised agent or in the case of our death by our personal representatives.

9. In the event of any corporation being a Guarantor the words "I", "me", "my", "us" and "our" hereinbefore appearing shall be deemed to apply to such corporations as if it was an individual guarantor.

10. This Guarantee shall not be affected by the death, lunacy, mental incapacity, bankruptcy or liquidation of any of us.

11. This Guarantee shall not be affected by any changes in your constitution whether by way of reconstruction or otherwise and this guarantee shall enure to the benefit which you may be amalgamated or consolidated, or within which you may be merged or absorbed.

12. This Guarantee shall not be affected by any changes in the Constitution of the Customer or Guarantor by way of reconstruction, consolidation, absorption, merger or amalgamation.

13. That as a separate severable and independent agreement and for the consideration aforesaid we agree with you that in the event that the whole or any part of the Customer's liability to you the subject of this Guarantee shall not be recoverable from us by reason of any legal limitation, disability or incapacity (including infancy) on or of the Customer or by reason of any other failure of liability of the Customer for any reason and whether or not know to you we will nevertheless **INDEMNIFY AND KEEP YOU FULLY INDEMNIFIED** at all times hereafter against all loss or damage that you may suffer by reason of such limitation, disability, incapacity or other failure of liability as aforesaid.

14. The Company may assign its rights under this application and, in particular, this guarantee provision, without the prior consent or knowledge of the Guarantors. In this event, this guarantee will remain in full force and effect in relation to indebtedness incurred by the Customer to the Company (or its assignee) both before and after the date of that assignment. A reference to the Company in this paragraph includes its assignee or successor.

15. Each of the Guarantors acknowledges having read the terms of this Guarantee and having been advised to, and been given the opportunity to, seek independent legal advice prior to execution of this Guarantee.

DATED this day of in the year

SIGNED AND DELIVERED by

The Guarantor	The Guarantor
Full Name: ..... …..	Full Name: .....
Address:	Address: .....
……	……..……..…….
Signature: …….	Signature: ……
Witness full name: …….	Witness Signature: ……..…….

Witness address: ……..……Postcode…….……

LVR 10/2010.