

TERMS OF TRADE

1. Conditions of Engagement (General)

The only contractual terms which are binding upon the Supplier are those set forth herein, those imposed by law as hereinafter mentioned and those otherwise agreed to in writing by the Supplier and all other conditions and warranties whether expressed or implied and all representations, statements or obligations which would otherwise be binding upon the Supplier, are to the extent permitted by law, hereby expressly excluded and negated.

2. Payment Terms

- (a) All accounts are payable within 30 days after the date of invoice.
- (b) Interest shall be payable by the Applicant on the total amount of the debt from time to time outstanding calculated 14 days from the date of the invoice until the actual date of the payment at (the current rate of interest for overdraft plus 3%) per annum compounded monthly.
- (c) All payments are to be made to the Supplier care of the address shown on the Supplier's invoice.

3. Jurisdiction of Courts

The Applicant hereby submits to the jurisdiction of the appropriate Court as selected by the Supplier (or in default thereof the State of New South Wales) should it be necessary to decide any matter, claim or issue arising out of this Agreement, goods sold and/or delivered and/or services rendered or any other matter whatsoever between the Supplier and the Applicant.

4. Legal and Recovery Costs

- (a) All legal costs and/or any other expenses whatsoever incurred by the Supplier in respect of this Agreement, personal guarantees or otherwise including collection costs (including commissions), dishonoured cheque fees and/ or expenses associated with the enforcement or attempted enforcement of any rights of the Supplier pursuant to this Agreement shall be paid by the Applicant immediately upon demand.
- (b) In any action, proceeding or claim brought or made against the Guarantor/s pursuant to this Agreement, a certificate signed by either the Credit Manager or a Director of the Supplier shall be prima facie evidence of the outstanding amount owed by the Applicant and also of the amount owed by the Guarantor/s.
- (c) There shall be no obligation upon the Supplier to first make demand upon or proceed against the Applicant before making demand upon and proceeding against the Guarantor/s.

5. Order of Payment

All monies and credits received by the Supplier shall be applied as follows:

- (a) Firstly, towards payment of any costs, charges, expenses and/or outgoings incurred by or paid by the Supplier and payable by the Applicant; and
- (b) Secondly, in or towards payment of any interest due or payable by the Applicant to the Supplier; and
- (c) Thirdly, in or towards payment of the debt.

6. Liability to Improper Exercise of Powers

The Supplier shall be not liable in any way for any loss or damage to the Applicant or any other person whether direct or consequential, which loss or damage arises directly or indirectly in any way from or in connection with the Supplier's use or attempted use of its powers pursuant to this agreement. This clause shall apply even though the use of the said powers may be unsuccessful or unjustified on any grounds whatsoever. Where such loss or damage occurs to a third party the Applicant hereby indemnified the Supplier against all liability thereof to the fullest extent permitted by law.

7. Waiver and Variation

The Supplier shall not be deemed to have waived any terms or conditions of this agreement or agreed to any variation thereof unless it has done so expressly in writing.

8. Withdrawal of Credit

The Supplier at its absolute discretion whether or not the Applicant is in default may stop credit.

9. Security

In the event of the Supplier allowing credit, the Applicant hereby charges, as a separate and additional obligation, with payment of any monies owing under this agreement all he has currently and or in the future in:

- (a) Land or other property;
- (b) Any/all Trusts of whatever nature
- (c) Any/all Wills, estates of whatever nature
- (d) Any/all Superannuation funds of whatever nature
- (e) Any/all Life and/or Death policies of insurance and/or Life Annuities of whatever nature

and hereby appoints the Supplier and or its nominated representative (and/ or its duly authorised attorney) to sign all documents (including mortgages/ transfers) on its behalf to record that charge over the Applicant's property, and if necessary to sell same to repay the debt owing under this agreement. This charge shall only come into operation if the Applicant defaults.

10. Property in Goods

Goods supplied shall be at the Applicant's risk immediately on delivery/ custody of the Applicant. Property in goods supplied hereunder will pass to the Applicant when:

- (a) All goods the subject of any contract between the Applicant and the Supplier have been paid for in full.
- (b) The Applicant has the right to dispose of the goods in the course of its business and to pass good title to its customer being a bona fide purchaser for value without notice of the Supplier's rights. If the goods are on-sold prior to the Supplier being paid in full then the sale proceeds are to be held on trust by the Applicant for the Supplier.

11. Identity of Applicant

Should the identity/particulars of the Applicant be found to be incorrect (in the Supplier's opinion) then the person/s signing on behalf of the Applicant shall be deemed to be personally liable and stand in place of the Applicant and agrees to be personally bound by the Terms and Conditions thereof.

12. Price and Quotations

The Supplier reserves the right to alter prices without notice. The Applicants agree to pay any GST and any other government duties, levies or taxes payable on services provided by the Supplier without deduction to the monies invoiced by the Supplier.

13. Limitation of Liability

The Supplier hereby limits the amount of its liability for goods sold and/or delivered and/or services rendered at the Supplier's option to:

- (a) In the case of goods, any one or more of the following:
 - i. The replacement of the goods or the supply of equivalent goods;
 - ii. The repair of the goods;
 - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods;
 - iv. The payment of the cost of having the goods repaired; or
- (b) In the case of services:
 - i. The supplying of the services again; or
 - ii. The payment of the cost of having the services supplied again.

Subject to the above, under no circumstances will the Supplier be liable for any loss or damage to persons or property of any nature as a result, direct or indirect, of any defect, deficiency or discrepancy in goods sold and/ or delivered and/or services rendered sold or supplied by the Supplier. It is the Applicant's sole responsibility to ensure that the goods sold and/or delivered and/or services rendered supplied are sufficient and suitable for the purposes of the Applicant.

14. Defences

(a) The Applicant agrees that should the Supplier commence legal action against it for monies outstanding that it will not raise the following Defence/s:

- i. Action commenced in wrong jurisdiction and/or state
- ii. Counter Claim for alleged damages
- iii. Set-off for monies allegedly owing

15. Interpretation

In this Agreement, unless a contrary intention appears, a reference to:

- (a) The singular includes the plural and vice versa;
- (b) Any gender includes all other genders;
- (c) A person includes a corporation and an association whether incorporated or not and vice versa;