

AQUA PLUMBING SUPPLIES PTY LTD



**aquatechnik**<sup>®</sup>  
australia

Multi-layer Polymer Pipe & Fitting Systems for Residential, Commercial & Industrial Plumbing

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Account No:

# AQUA PLUMBING SUPPLIES PTY LTD



## APPLICATION FOR A MONTHLY CREDIT ACCOUNT

Aqua Plumbing Supplies Pty Ltd ABN: 59 616 786 335 trading as Aquatechnik Australia

Sole Trader                       Company

PLEASE PRINT AND COMPLETE FULLY. IF YOU REQUIRE ANY ASSISTANCE, PLEASE CONTACT OUR ACCOUNTS OFFICE.  
PLEASE RETURN THIS APPLICATION ONCE COMPLETED TO 1600 CANTERBURY ROAD PUNCHBOWL NSW 2196.

REGISTERED COMPANY NAME: \_\_\_\_\_ ABN: \_\_\_\_\_

TRADING NAME (IF DIFFERENT FROM THE REGISTERED NAME): \_\_\_\_\_

REGISTERED ADDRESS: \_\_\_\_\_

POSTAL ADDRESS: \_\_\_\_\_

BUSINESS PHONE: \_\_\_\_\_ BUSINESS FAX: \_\_\_\_\_

MOBILE: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

EMAIL ADDRESS FOR INVOICES & STATEMENTS: \_\_\_\_\_

Please tick the box that describes your main business type:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> BUILDER               | <input type="checkbox"/> HVAC            | <input type="checkbox"/> PROJECT HOUSING |
| <input type="checkbox"/> COMMERCIAL INDUSTRIAL | <input type="checkbox"/> CIVIL           | <input type="checkbox"/> GAS             |
| <input type="checkbox"/> PLUMBER               | <input type="checkbox"/> ROOFING PLUMBER | <input type="checkbox"/> REFRIGERATION   |
| <input type="checkbox"/> PROJECT BUILDER       | <input type="checkbox"/> HIGH DENSITY    | <input type="checkbox"/> MEDIUM DENSITY  |
| <input type="checkbox"/> FACILITY MAINTENANCE  | <input type="checkbox"/> OTHER: _____    |  |

### CREDIT REFERENCES (LIST THREE MAJOR SUPPLIERS WHERE YOU ARE CURRENTLY PURCHASING FROM)

COMPANY NAME AND REGISTERED ADDRESS	CONTACT NO.		
1.			
2.			
3.			

### PARTICULARS OF PROPRIETORS & PARTNERS

PROPRIETORS & PARTNERS FULL NAME AND RESIDENTIAL ADDRESS	HOME NO.	DATE OF BIRTH	DRIVERS LICENCE NO.
1.			
2.			
3.			

### DETAILS OF PROPERTY (TO INCLUDE ALL PRIVATE LAND AND RESIDENCES)

PROPERTY ADDRESS	SOURCE OF FINANCE	MORTGAGE VALUE	PROPERTY VALUE
1.			

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Account No:

2.			
3.			

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Account No: \_\_\_\_\_

**SIGNED AND SEALED BY/ON BEHALF OF THE CUSTOMER**

I/We hereby acknowledge, affirm and agree that I/We have read all the terms and conditions of the Credit Application, Terms and conditions of Sale and Agreement and I/We fully understand and comprehend same and certify the information supplied herein as the basis for you to grant credit is true and correct.

Executed as a deed by the Guarantor:

Signature: _____	Signature of Witness: _____
Print Name _____	Print Name: _____
Date: _____	Date: _____
Signature: _____	Signature of Witness: _____
Print Name _____	Print Name: _____
Date: _____	Date: _____

**ACCOUNT DETAILS (TO ASSIST US TO CORRECTLY SERVICE YOUR NEED – FOR OUR USE ONLY)**

TOTAL AMOUNT OF CREDIT REQUIRED: _____	CONTACT NAME FOR QUERIES _____
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**AQUA PLUMBING SUPPLIES PTY LTD TEAM MEMBER TO COMPLETE**

ANTICIPATED MONTHLY SPEND: \_\_\_\_\_

PRIME BRANCH NAME/NUMBER: \_\_\_\_\_ Account Manager Name/Number \_\_\_\_\_

BUYING GROUP TYPE (IF ANY): \_\_\_\_\_ Privacy Policy Y/N (statement inserted): \_\_\_\_\_

LOYALTY PROGRAMME TYPE (IF ANY): \_\_\_\_\_

COMMENTS:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MANAGER: \_\_\_\_\_ Date: \_\_\_\_\_

**CREDIT DEPARTMENT TO COMPLETE**

ANTICIPATED MONTHLY SPEND: \_\_\_\_\_

PROPOSED CREDIT APPROVAL TO A LIMIT OF: \_\_\_\_\_ AUTHORIZED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

CREDIT APPROVAL LIMITED ALLOWED: \_\_\_\_\_ AUTHORIZED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (DIVISIONAL GENERAL MANAGER IF APPLICABLE)

COMMENTS:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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## AQUA PLUMBING SUPPLIES – TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods and services ("goods") from Aqua Plumbing Supplies ("Supplier"), you ("Customer") agree that the following terms and conditions of sale shall apply to the supply. These terms and conditions replace any previous terms and conditions of sale. These terms and conditions create a security interest in favour of the Supplier for the purposes of the Personal Property Securities Act.

### 1. DEFINITIONS AND INTERPRETATION

In these terms and conditions and the following sections of this document entitled "Deed of Guarantee and Charge" and any other associated or collateral documents (unless a contrary intention is stated):

- (a) "Consumer" means a consumer as that term is defined in the Australian Consumer Law;
- (b) "Consumer Contract" has the meaning given in the Australian Consumer Law.
- (c) "Customer" means a person whose order for the purchase of goods is accepted by the Supplier, including any customer whose details are completed and the application for a credit account;
- (d) "Group Company" means any related body corporate of the Supplier.
- (e) "Guarantor" means any person referred to in the Deed of Guarantee and Charge and where more than one person is named, includes each of them jointly and severally.
- (f) "PPSA" means the Personal Property Securities Act 2009;
- (g) "Purchase Monies Securities Interest" or "PMSI" has the meaning given in section 14 of the PPSA as amended from time to time.
- (h) "Small Business Contract" has the meaning given in the Australian Consumer Law.
- (i) "Aqua Plumbing Supplies" or "Supplier" means Aqua Plumbing Supplies Pty Ltd ACN 616 786 335 or any of its Related Bodies Corporate or their respective assigns trading under various names or styles.

### 2. INTERPRETATION

- (a) The headings used do not form part of these terms and conditions and are for convenience only.
- (b) Where the context admits or requires, words importing the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- (c) "Including" is not a term of limitation.

### 3. GENERAL

- (a) Unless otherwise specifically agreed in writing by the Supplier, where any terms and conditions of the Customer's order are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed to in writing by the Supplier are rejected by the Supplier and of no force or effect.
- (b) A quotation does not constitute an offer to sell goods to the Customer. No contract for the supply of goods will exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance). The Supplier may accept or reject any order for goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- (c) The Supplier may vary these terms and conditions by notice in writing to the Customer (which notice may be given via the Suppliers Website). If the Customer is a Consumer or these terms and conditions are a Consumer

Contract or Small Business Contract, then the Customer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the goods ordered before the date of the variation but which are intended to be subject to the variation. If the Customer is not a Consumer or these terms and conditions are not a Consumer Contract or Small Business Contract, the Customer agrees that goods ordered after the date on the notice of the variation will be subject to the variation and acceptance of the goods or the placing of the order is deemed to be an acceptance of such varied terms and conditions.

- (d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer must notify the Supplier in writing within 28 days of the variation occurring. The Supplier may immediately terminate these terms and conditions if the change to the Customer's business is not acceptable to the Supplier, in the Supplier's absolute discretion (or if these terms and conditions are a Consumer Contract or Small Business Contract, where such change to the Customer's business will cause a material detriment to the Supplier).
- (e) These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and will be for the benefit of the Suppliers successors and assigns.

### 4. PRICING/PAYMENT

- (a) Notwithstanding any prior acknowledgment by the Supplier of the price of goods, the prices specified for goods may at the Supplier's option be subject to alteration to reflect the Supplier's prices and charges in effect at the time of delivery.
- (b) Any variations in the in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts shall be to the Customer's account.
- (c) If the Customer is a Consumer or these terms and conditions are a Consumer Contract or Small Business Contract, then the Customer may consider the variation referred to in clause 4(b) and, if not acceptable, may elect not to proceed with the purchase of the goods ordered before the date of the variation but which are intended to be subject to the variation.
- (d) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever. The Customer must not set off any amounts allegedly owing by the Supplier to it against any amount due by it to the Supplier.
- (e) Where credit is extended to the Customer, all account invoices and statements will be submitted by the Supplier electronically ("E-invoice") to the Customer via the Customer's nominated email address. The Supplier will not generally send a paper copy of the invoice or statement unless the Customer requests it. The Customer can obtain a paper copy of the invoice or statement by sending a written request to the Supplier.
- (f) Where the Supplier submits an E-invoice to the Customer's nominated email address the E-invoice will be deemed to have been received by the Customer on the date it was sent unless the Supplier receives a notification that the email did not reach its intended recipient and the records of the Supplier shall be conclusive in the regard.
- (g) It is the Customer's responsibility to ensure that the contact information provided to the Supplier is current and accurate including the Customer's nominated email address, which the Supplier will use to submit the E-invoice. The Customer

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agrees to promptly notify the Supplier of any changes to the Customer's contact information.

- (h) Unless otherwise agreed to by the Supplier, the accepted means of paying accounts will be by cash, bank cheque, COD, electronic funds transfer credit card or PayPal, all without any deduction.
- (i) Payments received by the Supplier shall be applied first in payment of interest and any costs of and incidental to debt recovery and any amounts payable under these terms and conditions and then in reduction of principal.
- (j) Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

## 5. ACCOUNT TERMS

- (a) Unless otherwise agreed in writing by the Supplier, the Customer shall pay for all goods delivered in any calendar month on or before the last trading day in the following month.
- (b) Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by the Supplier at the time the Customer's account was established or as subsequently altered by the Supplier. In all other respects these terms and conditions will apply.
- (c) If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily basis at 16% pa from the due date for payment until the actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest.
- (d) The customer must pay any legal costs (on a full indemnity basis), stamp duties, any bank charges or merchant fees or like charges incurred by or levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on these terms and conditions or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs and dishonoured cheque fees.
- (e) Despite any other clause in these terms and conditions, the Supplier may withdraw the Customer's credit facilities at any time without notice or at its discretion alter the Customer's credit limit for any reason) including to meet the Customer's then buying needs). The Supplier will notify the Customer of any alteration in the credit limit by notice to that effect in the following monthly account statement. Any credit approval limit noted in this form, any monthly statement or otherwise is for the Supplier's information only and does not oblige the Supplier to provide any credit (or any amount of credit) at any one time or from time to time.
- (f) The Customer is liable for all purchases made under his, hers or its account number and/or account name. In the absence of the Supplier having any explicit knowledge to the contrary, it is not the responsibility of the Supplier to confirm authority for the purposes of supplying or delivering goods to the Customer, its agent(s) or those who the Customer represents are or the Supplier deems to be the Customer's agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name.

## 6. PERSONAL PROPERTY SECURITIES ACT

- (a) The Customer agrees that these terms and conditions create a PMSI in the goods (and their proceeds) supplied presently and the future by the Supplier to the Customer.
- (b) The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer under these terms and

conditions and to ensure that the Supplier acquires a perfected security interest in the goods under the PPSA.

- (c) The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent client basis) in relation to or in connection with the registration of the Supplier's security interest and all other costs associated with protection and enforcement of the Supplier's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that the Supplier has with the Customer.
- (d) The PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- (e) Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
  - i. Receive a notice of intention of removal of an accession (s95)
  - ii. Receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118);
  - iii. Receive a notice of enforcement action against liquid assets (s121(4));
  - iv. Receive a notice of disposal of goods by the Supplier purchasing the goods (s129);
  - v. Receive a notice to dispose of collateral including the goods (s130);
  - vi. Receive a statement of account following disposal of the goods (s132(1));
  - vii. Receive a statement of account if no disposal of the goods, six monthly (s132(4));
  - viii. Receive notice of any proposal by the Supplier to retain the goods (s135(2));
  - ix. Object to any proposal by the Supplier to either retain or dispose of the goods (s137(3));
  - x. Redeem the goods (s142);
  - xi. Reinstate the security agreement (s143); and
  - xii. Receive a notice of any verification statement (s157(1) and 157 (3)).
- (f) To the extent permitted by the PPSA, these terms and conditions may be excluded in the Supplier's discretion and to the extent which they would otherwise confer rights on the Customer.
- (g) The Customer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- (h) The Customer's right to possession of goods still owned by the Supplier under these terms and conditions shall immediately cease if:
  - i. The Customer, being an individual, commits an act of bankruptcy;
  - ii. The Customer, being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a deed of company arrangement;
  - iii. The Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;
  - iv. Any cheque the Customer provides to the Supplier or any Group Company is dishonoured for payment;
  - v. The Customer failing to comply with any demand for payment issued by the Supplier or any Group Company; or

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- vi. The Customer breaching any of the terms and conditions contained herein and/or are in default of any other agreement between the Supplier or any other Group Company and the Customer.
- (i) The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the goods supplied by the Supplier are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) will not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.
- (j) The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer, as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Supplier has on the value of the goods recovered.
- (k) Until ownership of the goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA.
- (l) The Customer agrees not to change the Customer name or undertake any changes to any documents that the Supplier has registered, requires to be registered or are capable of being registered without our prior written consent of the Supplier.
- (m) For avoidance of doubt, these terms regarding the PPSA apply even where the Customer is a Consumer.

## 7. DEFAULT

If:

- (a) The Supplier has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to the Supplier or there is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer; or
- (b) An administrator, liquidation or provisional liquidator is appointed in respect of the Customer; or
- (c) A receiver, receiver and manager, administrator of controller is appointed in respect of any assets or group of assets of the Customer; or
- (d) The Customer goes into bankruptcy or is wound up; or
- (e) The Customer becomes, admits in writing that it is, or declared by a court to be unable to pay its debts as and when they fall due; or
- (f) There is a breach by the Customer of any of these terms and conditions, then all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired; and the Supplier may without prejudice to any other rights it may have, do any or all of the following:
  - i. Place on stop any credit facilities which may have been extended to the Customer;
  - ii. Withdraw any credit facilities which may have been extended to the Customer;
  - iii. Withhold any further delivery of goods;
  - iv. In respect of goods already delivered, enter onto the Customer's premises to recover and resell the goods for its own benefit;
  - v. Recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries;

- vi. Exercise such rights as are afforded to the Supplier under the PPSA; or
- vii. Exercise any rights of the Supplier under these terms and conditions.

## 8. DELIVERY

- (a) Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer. If no such address is nominated, then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- (b) The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.
- (c) The Supplier reserves the right to charge a reasonable amount for storage if delivery instructions are not provided by the Customer within 14 days of the request by the Supplier for such information.
- (d) The Customer authorises the Supplier to deliver products to the place nominated by the Customer and to leave the products at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- (e) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign otherwise take delivery, then such signed receipt or other acknowledgment shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- (f) Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.
- (g) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- (h) The Supplier reserves the right to deliver goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment, or deliver and instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.

## 9. PROPERTY AND RISK

- (a) The goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.
- (b) Property in and title to the goods will not pass to the Customer until those goods and all amounts owed to the Supplier by the Customer in respect of those goods have been paid for in full and until then:
  - i. The Customer will hold the goods as fiduciary and bailee for the Supplier;
  - ii. The goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
- (c) The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the

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Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the goods or fails to supply details of its insurance policy, the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

#### 10. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party. Notwithstanding any other provisions of these terms and conditions, the Customer may not return goods if the Customer has provided any incorrect information in the specifications for a special order where the goods as supplied conform with the specifications provided by the Customer (even if the Customer is a Consumer).

#### 11. RETURN OF GOODS – CONSUMERS

If the Customer is a Consumer:

- (a) The goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. The Customer is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) The guarantees under the Australian Consumer Law are given by the Supplier.
- (c) If the Customer believes the goods do not comply with the statutory guarantees, the Customer must contact the Supplier and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods do not comply with the statutory guarantee the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
- (d) No other guarantees or warranties apply to the goods unless a further and additional warranty is provided, in writing, to the Customer by the Supplier.

#### 12. RETURN OF GOODS AND CLAIMS UPON SUPPLIER (NON CONSUMERS)

If the Customer is not a Consumer:

- (a) Unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier, and deducted from the amount of credit allowed to Customer.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) All claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice then the Customer is deemed to have accepted the goods.
- (d) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void. To the extent permitted by law all other conditions, warranties and undertakings are expressly excluded.
- (e) The Supplier's liability for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one 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 having the goods repaired.
- (f) The Supplier shall not be liable for any indirect loss or damages whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

#### 13. PRIVACY

- (a) The Supplier's policies available on its website or upon request to the Supplier, forms part of these terms and conditions.
- (b) Our web site may be hosted, or some data may be stored overseas including in Italy and United States of America for reasons of uniformity and convenience for the Group Companies. All personal information derived from Australia will still be treated in accordance with the Supplier's policies while being stored overseas.
- (c) In accordance with the Supplier's Policies, the Customer agrees that the Supplier may collect personal information about the Customer and/or Guarantor(s) for the Supplier's primary purposes set out in this clause, and the Supplier may use or disclose information to the Group Companies and to third parties for the purpose of providing the goods, providing information about goods; sending information on any of the Group Companies and our services; performing our administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to the Supplier or any other Group Company; managing our rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of any of the Group Company's goods' and developing and identifying products and services that may interest you.
- (d) The Supplier may collect, and may already have collected, Information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including credit, sales, marketing and administration.
- (e) The Customer and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Customer 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 Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Privacy Act.
- (f) The Supplier may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit reporting bodies including Veda Advantage Information Services Solutions Limited and Dun and Bradstreet. The Customer and/or Guarantor(s) consent to such disclosure. .

#### 14. FITNESS FOR PURPOSE

To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.



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#### 15. GST

- (a) Any expression used in this clause and which is defined in the "A New Tax System, (Goods and Services Tax Act 1999)" has the same meaning in this clause 15.
- (b) With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these terms and condition, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

#### 16. TRUST AND TRUSTEES

Where the Customer is a trustee:

- (a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
- (b) The Customer warrants that it has full power and authority to enter into these terms and conditions and where applicable the following section of this document titled "Deed of Guarantee and Charge" on behalf of the trust and that it (and the trust and all the trust's real and personal property) shall be bound by these terms and conditions and that it enters into this "Deed of Guarantee and Charge" both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into this or any other credit agreement with the Supplier.

#### 17. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- (a) Unless varied by notice in writing by the Supplier these terms and conditions shall be governed by and construed in accordance with the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) The parties agree that proceedings may be commenced in any Court of New South Wales.

#### 18. NOTICES

Notices to be given by the Customer to the Supplier may be delivered personally or sent to the National Credit Manager of the Supplier at the Supplier's address at 1600 Canterbury Road Punchbowl NSW 2196 and, unless the contrary is proved, notice shall be taken as delivered when received by the Supplier at that address. Notices to be given to the Customer by the Supplier may be delivered personally or sent to the Customer's last known address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

#### 19. SEVERANCE

In the event that the whole or any part or parts of any provisions in this agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

#### 20. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the manufacture and/or supply of the goods or any part thereof to a third party.

#### 21. CERTIFICATE

A statement in writing signed by the Supplier's Credit Manager or by other duly authorised officers ("the certificate") stating all or any of the following matters, facts or things:

- (a) The amount due at any date for all goods provided by the Supplier to the customer.
- (b) The amount due at any date for interest on the monies due.
- (c) The amount due at any time for legal costs actually incurred by the Supplier including the costs of and incidental to any litigation, stamp duties and other expenses payable on these terms and conditions, or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees.
- (d) The date of making default in performing or observing any terms and conditions, covenant or agreement to be performed or observed by the Customer.
- (e) Whether such default has continued between specified dates.
- (f) Anything else relevant to the establishment of any right or remedy of the Supplier or of the liability of the Customer, shall be conclusive evidence of such matter(s), fact(s) or thing(s) stated in the certificate.

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Account No:

## DEED OF GUARANTEE AND CHARGE

In consideration of the Supplier's acceptance of this application and/or in consideration of the supplier providing and/or continuing to provide goods to the Customer and as an essential condition of the terms of supply, the Guarantor(s) (referred to as **I, we, my, our, us** or the **Guarantor**) agrees as follows;

1. Each of us acknowledges that the information provided in this application is the basis for evaluation by the Supplier of the financial standing and credit worthiness of each of us and do hereby:
  - (a) Authorise the Supplier to make such enquiries and receive such information from the bankers and business referees mentioned in this application and otherwise from anyone as the Supplier may reasonably consider necessary.
  - (b) Certify that the information provided in this application is true and correct.
  - (c) Agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
    - i. To assess an application by me/us for credit of commercial credit;
    - ii. To notify other credit providers of a default by me/us;
    - iii. To exchange information with other credit providers as to the status of my/our account where I am/we are in default with the Supplier or with another creditor provider;
    - iv. To assess my/our credit worthiness or commercial credit worthiness at any time;
    - v. To assess whether to accept me/us as Customer or to continue supplying credit to the Customer;
  - (d) Agree that the Supplier may seek from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Customer for credit applied for, or provided to the Customer;
  - (e) Agree that these authorisations shall continue to have affect for the duration of the period during which credit or commercial credit is provided or sought by me/us from the Supplier or, while any moneys are owned on any account by me/us or any guarantor of mine/ours to the Supplier.
2. Whether or not credit facilities are approved, future supply of products to the Customer shall be on the terms and conditions of this document the "Deed of Guarantee and Charge". If credit is refused or withdrawn, then payment shall be in accordance with Supplier's requirements (for supply to the Customer) from time to time instead of any credit period which may otherwise have applied.
3. In consideration of the acceptance of this application by the Supplier and as an essential condition of the terms of supply, we jointly and each of us severally charge all of my, our, and its real property both present and future and wheresoever situated with the amount of my, our and its (as the case may be) indebtedness to the Supplier on any account whatsoever, from time to time and each person shall immediately upon demand being made on he, she or it by the Supplier, sign all documents and do all things that the Supplier may reasonably require to be signed and done to further secure to the Supplier the amount of such indebtedness to the Supplier including but not limited to such guarantee and or indemnity instruments in such terms as are required by the Supplier and such mortgage or mortgages over any real property (whether acquired before or after the date of this Deed of Guarantee and Charge) containing such covenants as are required by the Supplier or such bills of sale or mortgage debentures over any or all items of personal property as are listed in any section of this document detailing any assets of mine/ours, before or after approval of credit by the Supplier and each of us hereby irrevocably appoints the Supplier, each manager and each credit manager from time to time of the Supplier, each successor of the Supplier, each assignee of the Supplier, each manager and each of them severally to be the duly constituted attorney of each of us to execute in our several names and as our several acts and deeds any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and consents to any caveats as the Supplier may wish to lodge against any dealings in any real property of mine/ours in any titles office and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing and undertake to not object to the lodging of any such caveat or take any steps to remove any such caveat. "Real property" includes estates and interests including leasehold. I/We hereby authorise any officer, partner or employee of any solicitors or agents engaged by the Supplier or any of the Suppliers offices or employees as referred to previously in this clause to sign any stamp duties form on my/our behalf so as to stamp any form required to withdraw any caveat lodged by the Supplier over any of my/our real property.
4. In consideration of the Supplier and the Group Companies agreed to supply the Customer, I/we guarantee payment to the Supplier of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with the Supplier.
5. I/we hereby agree and acknowledge:
  - (a) That this is a continuing guarantee;
  - (b) To indemnify the Supplier against all loss or damage arising from any past, present or future dealing with the Customer or any of us;
  - (c) That our liability under this guarantee is joint and several;
  - (d) That our liability will not be affected, waived or discharged by the reason of any time or indulgences granted by the Supplier or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this Deed of Guarantee and Charge;
  - (e) That our liability under this guarantee shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by the Supplier voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA;
  - (f) That this guarantee becomes immediately binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee;
  - (g) That the Supplier is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor;
  - (h) That this guarantee may not be unilaterally revoked by me or any of us and remains in force until such time as I/we receive written confirmation from the Supplier that we are released from our obligations and liabilities under this guarantee;
  - (i) That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
  - (j) That I/we indemnify the Supplier against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Customer and,
  - (k) That I/we sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary.
6. Each Guarantor acknowledges that:
  - (a) the Guarantor has either:
    - i. sought advice if necessary as to the effect and consequences of and obligations created by this Deed of Guarantee and Charge from an independent legal practitioner; or
    - ii. having had the opportunity to seek such advice, determined such advice was not necessary and that it understood the effect and consequences of and obligations created by this Deed of Agreement and Charge, before executing this Deed of Guarantee and Charge; and
    - iii. it enters into this Deed of Guarantee and Charge freely after considering such advice or electing not to obtain such advice.

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Account No:

**SIGNED, SEALED AND DELIVERED BY THE GUARANTOR**

I/We hereby acknowledge, affirm and agree that I/We have read all the terms and conditions of the Deed of Guarantee and Charge and the Application, Terms and conditions of Sale and Agreement and I/We fully understand and comprehend same and certify the information supplied herein as the basis for you to grant credit is true and correct.

Executed as a deed by the Guarantor:

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Signature of  
Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Signature of  
Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_