

### Section A – Your Details

#### IF YOU'RE A COMPANY

Registered name of incorporated body ..... ("the Applicant")

ACN..... ABN..... ENTITY TYPE - PUBLIC  PRIVATE  GOVERNMENT  INCORPORATED ASSOCIATION

Business Name (if any) ..... Affiliated/parent company (if applicable) .....

#### IF YOU'RE A TRUST

TRUSTEE TYPE - COMPANY  INDIVIDUAL  TYPE OF TRUST - DISCRETIONARY  UNIT

Trustee Name/s .....

..... ("the Applicant") ACN (if applicable) .....

Name of Trading Trust .....

Business Name (if any) ..... (ABN).....

**Please provide a copy of your trust deed, a list of beneficiaries and statement of assets**  Trust Deed provided  List of beneficiaries provided  Statement of Assets provided

#### IF YOU'RE A PARTNERSHIP / SOLE TRADER

Partnership/Sole Trader Name/s.....

..... ("the Applicant")

APPLICANT TYPE - PARTNERSHIP  SOLE TRADER  Period In Business:.....YRS (ABN).....

Business Name (if any) .....

Accountant Name ..... Accountant Company / Practice .....

Accountant Phone ..... Accountant Email .....

#### ALL APPLICANTS PLEASE COMPLETE

Date Business Commenced ...../...../..... Nature of Business/Main Business Activity .....

Number of Employees ..... Business Address (must be street address) .....

.....

State ..... Postcode .....

Own  Buying  Renting  Phone Number ..... Mobile .....

Email address ..... Website .....

Authorised Officer Name.....

Authorised Officer Email ..... Authorised Officer Phone .....

Accounts Payable Name .....

Accounts Payable Email ..... Accounts Payable Phone .....

Has the Applicant or any associated company or person traded with our companies or businesses in the past? YES  NO

(If Yes) under what name? .....

Postal Address .....

State ..... Postcode .....

## Section B – Ownership

**Details of Ownership:** (Please tick) Directors  Partners  Sole Trader

1 **Name in Full (including any middle names and alias)**.....  
Residential Address .....  
Own  Equity Held ..... Buying  Renting  Date of Birth...../...../..... Over 21? Yes/No.....  
Personal Email..... Mobile Number .....  
Work Email .....  
Licence No.....  Copy of licence provided Position/Occupation.....

2 **Name in Full (including any middle names and alias)**.....  
Residential Address .....  
Own  Equity Held ..... Buying  Renting  Date of Birth...../...../..... Over 21? Yes/No.....  
Personal Email..... Mobile Number .....  
Work Email .....  
Licence No.....  Copy of licence provided Position/Occupation.....

3 **Name in Full (including any middle names and alias)**.....  
Residential Address .....  
Own  Equity Held ..... Buying  Renting  Date of Birth...../...../..... Over 21? Yes/No.....  
Personal Email..... Mobile Number .....  
Work Email .....  
Licence No.....  Copy of licence provided Position/Occupation.....

At any time has any Proprietor, Director, or Manager of the Applicant Customer been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director or Partner of a business which has failed or was the subject of a Scheme of Arrangement, Receivership, Voluntary Administration, Liquidation or to which an Administrator or Controller has been appointed?

YES  NO If Yes, please give details: .....

Have you given any personal guarantees?  YES  NO If Yes, please give details: .....

## Section C – Trading

### Trade References (Major suppliers)

1 **Reference #1 Name** .....Phone .....  
Account No..... Address .....  
.....  
Email ..... Credit Limit .....

2 **Reference #2 Name** .....Phone .....  
Account No..... Address .....  
.....  
Email ..... Credit Limit .....

3 **Reference #3 Name** .....Phone .....  
Account No..... Address .....  
.....  
Email ..... Credit Limit .....

Anticipated Monthly Purchases Required..... (this field must be completed)

## Section D – Acknowledgements and Consents

### **! IMPORTANT !**

As the Applicant, you acknowledge that you have received a copy of the HAMPIDJAN Terms and Conditions prior to signing this Credit Account Application and you agree to trade with us on the basis of these Terms and Conditions. As the Applicant, you agree to:

1. Charge all of your interest in real property both (a) present and (b) future in order to secure payment of any and all monies which are now or later becomes due and payable by you to HAMPIDJAN;
2. The lodgement by HAMPIDJAN of a Caveat or Caveats noting its interest pursuant to such charge. If you are making this application as Trustee of any Trust including without limitation the Trust (if any) described in this Application then:-
  - a) the reference to "real property" in this clause includes any real property of the Trust in addition to your real property;
  - b) you warrant that you:-
    - (i) are the only Trustee/s of the Trust;
    - (ii) make this application for the purposes and benefit of the Trust;
    - (iii) have the power under the Trust to enter into and observe its obligations under this agreement/application; and
    - (iv) have a right to be indemnified out of the assets of the Trust in respect of your obligations under this agreement/application.

As the person(s) signing this Credit Account Application, you warrant that:

3. You have read the HAMPIDJAN Terms and Conditions;
4. You fully understand the nature and effect of the HAMPIDJAN Terms and Conditions;
5. You have authority to sign on behalf of and to bind the Applicant;
6. The information provided in this Credit Account Application is true and correct in every detail;
7. You agree to regularly update the Applicant's financial and trading information as HAMPIDJAN may reasonably require from time to time;
8. You irrevocably grant permission to HAMPIDJAN before, during or after the provision of credit to give and receive information about the Applicant to and from any Credit Reporting Agency, Credit Provider, Bank or Financial Institution or any other corporation, association or person in accordance with the Privacy Act 1988 (Cth) or otherwise. This information may concern the Applicant's Consumer and Commercial Credit and/or trading arrangements. It may consist of Credit Reports and other credit and trading information concerning the Applicant and its business. It may be used to assess or review this application at any time, to collect any overdue payments and to provide credit references in accordance with the provisions of the Privacy Act 1988 (Cth) or otherwise; and
9. You indemnify HAMPIDJAN in respect of any claims or actions arising out of the obtaining or providing of information concerning the Applicant.

**PRIVACY** | HAMPIDJAN is committed to your privacy. Our policy on the handling of personal information is to comply with the Australian Privacy Principles for the fair handling of personal information and credit information as set out in the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, the Credit Reporting Privacy Code or otherwise. In accordance with those principles and the HAMPIDJAN Privacy Policy, you will be given access to your personal and credit information on request. We use the types of personal information collected to consider and assess applications for employment, to supply you with our products and/or services and for assessing Credit Account Applications, managing accounts and, if necessary, to insure our risk in collecting debts. This information may be disclosed to our related or associated companies, other credit providers whether or not your account is overdue and, if necessary, our risk insurers, debt collectors and credit reporting bodies. If you do not provide all or part of the requested information, we may not be able to consider any application you make, supply you with our goods and/or services and or process your application for credit. If you have any questions or concerns about our Privacy Policy, please direct your requests to the Privacy Officer at 55 Telford Cct, Yatala QLD 4207 or (07) 5525 5555 or sales@hampidjan.com.au.

## Section E – Execution

Signed as an agreement on behalf of the Applicant by (tick applicable)

Directors

Partners

Sole Trader

**PLEASE ENSURE ALL PAGES ARE SIGNED WHERE INDICATED**

X.....  
Signature Print Name and Position

Date:...../...../.....

X.....  
Signature Print Name and Position

Date:...../...../.....

X.....  
Signature Print Name and Position

Date:...../...../.....

**Note: The Application MUST be signed by the sole trader if soler trader OR all partners if a partnership OR at least 2 active directors if a company or corporate trustee**

### **OFFICE USE ONLY**

DATE RETURNED \_\_\_\_\_

APPROVED

NOT APPROVED

APPROVED BY \_\_\_\_\_

SIGNATURE \_\_\_\_\_

### The Glossary

#### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any duties, fees, expenses, taxes (including GST) and disbursements, imposed by these Terms, including delivery and freight charges, installation and setup costs, permit and licence fees, toll or other road charges, storage and re-stocking fees, merchant fees and surcharges.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms, or the number of trading days listed on Our invoice.

**Customer** means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

**Due Date** means the date listed on Our invoice for Your payment of Goods and Services.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

**Goods** means any products, materials, merchandise and other goods that We supply to You pursuant to any Quote, Order and/or these Terms.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Loss which was contemplated by the parties at the time of entering into these Terms.

**Order** means Your request to purchase Goods and Services.

**PPSA** means:

- the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- any amendment made at any time to any other legislation as a consequence of the PPS Act.

**Quote** means Our written description and price of the Goods and Services to be supplied to You, which is valid for 30 days.

**Services** means services provided by Us to You pursuant to any Quote, Order and these Terms, including net making, rope splicing and wire rope splicing.

**Site** means any place where You request Goods and Services to be supplied.

**Supplier** means the entity or entities specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary

and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

**Website** means [www.hampidjan.com.au](http://www.hampidjan.com.au) as redirected from time to time.

In these Terms:

- A reference to 'Terms' means these Terms and Conditions of Business
- A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are being supplied;
- a reference to writing includes email and any communication through Our website;
- a reference to a clause or paragraph is a reference to these Terms;
- a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

### Framework of these Terms

#### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- These are the entire terms and conditions of all Goods and Services that We supply to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document.
- You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to supply Goods and Services.
- You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Queensland applying the laws of that State.

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_ Name \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

### 3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms.
- (b) We will provide You with 7 days' written notice of any updated or altered Terms. Unless You object in writing within those 7 days, any such Terms will apply to all Orders submitted after the date of the notice.
- (c) We may ask You to complete a new credit application if You object to any new or updated Terms.
- (d) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (e) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (f) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

## Ordering and Supplying

### 4. PRICES, QUOTATIONS AND ORDERS

- (a) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You. We may vary or cancel any Quote before an Order is accepted.
- (b) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (c) We have the right to change the price of Goods and Services supplied under these Terms before accepting any Order or request for a Quote.
- (d) We may accept or decline any Order by notifying You in writing or by delivering the Goods and Services to You.
- (e) We may ask you to pay a deposit for an Order at any time and in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as directed by Us.
- (f) Once We have accepted Your Order, You cannot cancel it without Our prior written consent due to the to-order nature of the Goods and Services. Such consent is at Our absolute discretion.
- (g) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your Order.
- (h) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.

### 5. SUPPLY AND DELIVERY

#### Supply

- (a) The specifications for the Goods and Services to be supplied under these Terms are contained in Your Order/s.
- (b) To facilitate Our supply of the Goods and Services, You must:
  - i) Provide accurate and complete information that We reasonably require, including specifications, instructions, measurements, designs, plans, files, records and other information;
  - ii) Facilitate access to information technology systems, premises, facilities, third parties where applicable and people with the relevant skills and experience (whether technicians, engineers, builders, management or staff) that We reasonably require;
  - iii) Provide clear and easy access for Us to deliver Goods, carry out Services and handle Our equipment to or around the Site;
  - iv) Provide adequate storage and protection for all Goods and any of Our equipment at the Site; and
  - v) Ensure that Your staff and agents cooperate with and assist Us as reasonably required.

- (c) You acknowledge and agree that:
  - i) Our Services are limited to the particular project, solution, tasks, activities, consultation or other scope of work that We have agreed to carry out and the specific circumstances that apply in the course of Our Services;
  - ii) Any Services provided are based on information that is available to Us at the time. You acknowledge and agree that actual results may be different from any Site conditions, objectives, budgets, projections or forecasts since unanticipated or unexpected events frequently occur and the variation may be material;
  - iii) We are entitled to rely on the accuracy and completeness of the information that We receive or obtain to supply the Services (whether obtained by Us or provided by You, Your officers, staff, advisors or consultants);
  - iv) You must promptly notify Us of any change in information that may have a material impact on the Services; and
  - v) We reserve the right to determine the method of splicing, application, installation or servicing of the Goods as may be necessary for the Goods and/or the Site.

#### Delivery

- (d) We may make the Goods available for Your collection or deliver the Goods to You.
- (e) We may appoint a third party carrier to perform Our obligations of delivery under these Terms. Delivery may also be by instalments.
- (f) You authorise Us to deliver the Goods and Services to the Site (or otherwise to the business addressed described in your account). You also authorise Us to leave Goods at this place whether or not any person is there to accept delivery.
- (g) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods and Services being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Services delivered.
- (h) You must provide a suitable and safe area for Us to deliver the Goods and Services, including a site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
  - (a) All supply and delivery times indicated by Us are estimates only. Such times are subject to the Goods being available and Our reasonable ability to supply and/or make delivery on that date.
  - (b) We will endeavour to supply Goods and Services at the time You need, but if We fail to deliver Goods and or supply Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods and Services.
  - (c) Delivery of Goods and Services is deemed to occur (and Our obligation is thereby discharged) when the Goods and Services are:
    - i) Handed to You or Your representative; or
    - ii) Delivered to the Site or address appearing on Your invoice for the Goods and Services; or
    - iii) Collected by You or Your representative, whichever occurs first.
- (d) If You do not collect the Goods and Services by the nominated collection date, then We may deliver the Goods and Services to any Site or address appearing on Your invoice for the Goods and Services. We may also store the Goods and Services or refuse to store the Goods and Services if We have not received full payment from You.
- (e) You agree to inspect the Goods immediately on delivery or collection.
- (f) You agree to inspect the Services immediately on completion.
- (g) You must pay all Additional Expenses We incur in relation to delivery, including:
  - i) Delivery and freight charges;
  - ii) Storage and/or restocking fees where You have failed to collect Goods and Services by the nominated collection date;
  - iii) Delay in delivery of the Goods and Services which is caused by You, the conditions of the Site or the nature of the Goods and Services being delivered;

- iv) Any unexpected labour, permit, licence or additional costs in relation to the delivery.
- v) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

## 6. RETURNS

- (a) Unless We agree otherwise in writing, We are not required to accept returned Goods from You or issue You with a credit for Goods.
- (b) Any returns or credits are at Our sole discretion and only apply to non-manufactured Goods supplied to You from existing stock.
- (c) The following Goods cannot be returned or credited whatsoever:
  - i) Goods of a manufactured nature (i.e. Goods not supplied from existing stock), including Goods that have commenced manufacture;
  - ii) Goods which are not in original or resaleable condition, including Goods not in their original packaging;
  - iii) Goods which have been supplied pursuant to a custom or special Order, including Goods manufactured to Your Order or other custom specifications; and
  - iv) Goods which have been damaged or altered by You.
- (d) If You wish to return any non-manufactured Goods, You must notify Us in writing within 7 days of delivery or collection of the Goods, together with the reason for return. If You do not notify Us in this way then We may refuse to accept Your return.
- (e) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods being returned.
- (f) Unless We otherwise agree in writing, You are responsible for and We may charge You Additional Expenses associated with returning Goods, including restocking or repacking charges at amounts advised by Us from time-to-time.
- (g) Credits may only be redeemed against future orders and subject to Our minimum order policy. No cash refunds will be issued for credits.

## How We Get Paid

## 7. PAYMENT AND CREDIT

### General Payment

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services on or before the Due Date.
- (b) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) Payment must be made in a method that is approved by Us. There may be Additional Expenses associated with Your chosen payment method (for example, a surcharge of up to 1.5% of the price of the Goods and Services).
- (d) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (e) If You do not pay for Goods and Services by the Due Date, We may:
  - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
  - ii) Require You to pay cash on delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
  - iii) Demand Your immediate payment of all outstanding monies;

- iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
- v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
- vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

### Credit Accounts

- (f) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (g) You irrevocably grant Us permission before, during or after the provision of a Credit Account to give and receive information about You to and from any credit reporting agency, credit provider, bank or financial institution or any other corporation, association or person in accordance with the *Privacy Act 1988* (Cth) or otherwise. You acknowledge and agree that this information may concern Your consumer and commercial credit and/or trading arrangements, credit reports and other credit and trading information about You and Your business. You acknowledge and agree that We may use this information to assess or review Your credit application at any time, to collect any overdue payments and to provide credit references in accordance with the provisions of the *Privacy Act 1988* (Cth) or otherwise.
- (h) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.
- (i) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (j) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (k) You also authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (l) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (m) Time is of the essence in relation to this section 7. This section 7 survives expiry or termination of these Terms.

## How We Take Security for Payment

## 8. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing and except where Goods and Services are posted to You, all risk in the Goods and Services passes to You when the Goods and Services are delivered to You (or Your agent, representative or nominated carrier).
- (b) If You have elected to have the Goods and Services posted to You, all risk in the Goods and Services passes to You when they are collected or delivered to the nominated carrier. You acknowledge and agree that You are responsible for all posted Goods and Services during transit.
- (c) Legal ownership of Goods and Services does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (d) Until legal ownership of the Goods and Services passes to You, all Goods and Services are held by You for Us as bailee. You must store the Goods and Services separately from Your own or anyone else's Goods and Services. Storage must be in a way that clearly identifies

the Goods and Services as Our property and prevents the Goods and Services from being damaged or spoiled.

- (e) You may resell any Goods and Services before legal ownership passes to You, provided that You:
  - i) Resell the Goods and Services to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods and Services on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods and Services; and
  - v) Allow us to inspect any records of any payments received for Goods and Services.
- (f) If You do not pay for Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods and Services wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods and Services. We reserve these repossession rights without being liable to You or any other third party in any way.
- (g) You acknowledge and agree that insurance for the Goods and Services is Your responsibility and is at Your own cost. You must ensure that any insurance adequately covers the value of the Goods and Services, the time that is intended to be covered and that the insurance remains valid at all times. This includes the time during transit, and between the time that risk in the Goods and Services passes to You and the date that title in the Goods and Services passes to You.

## 9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

### **Security for Goods Supplied**

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods supplied ("**Security Interest**").
- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

### **Assurances**

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the Goods that are intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI pursuant to the PPSA; and
  - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts You owe to Us, which We may apply towards amounts You owe to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those

proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.

- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts You owe to Us, which We may apply towards amounts You owe to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

### **Exclusion of Notices and Other Obligations**

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

### **Provision of Information**

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

### **Other**

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

**10. WARRANTIES AND EXCLUSIONS**

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("**the Act**")), where to do so would contravene that statute or cause any provision of these Terms and Conditions to be void. Nothing in these Terms and Conditions modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) You warrant that any purchase of Goods and Services or use of a Credit Account with Us is for business purposes only and is not for personal, domestic or household use.
- (c) However, if You are a consumer as that term is defined under the Australian Consumer Law, Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure. The benefits provided to You under this part are in addition to other rights and remedies available to You under the law
- (d) Except as expressly set out in the Act, these Terms and Conditions or a separate warranty document, We make no warranties or other representations under or in connection with these Terms and Conditions, and Our liability in respect thereof, is limited to the fullest extent permitted by law.
- (e) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Goods and Services (whether express or implied and even if that purpose is made known to Us) and You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services.
- (f) Specifically:
  - i) You are responsible for ensuring that the Goods and Services are suitable for Your intended purpose and use;
  - ii) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the Goods that are produced;
  - iii) No sale under these Terms constitutes a sale by description. Any description of Goods is by way of identification only; and
  - iv) To the extent permitted by law, all other implied conditions and warranties are excluded.

**11. LIMITATION OF LIABILITY**

- (a) To the extent permitted by law, We may limit Our liability to You pursuant to these Terms by Our choice of:
  - i) re-supplying the Goods and Services; or
  - ii) paying the cost to replace Goods and Services with equivalent Goods and Services; or
  - iii) reimbursement of some or all of the price paid by You for the Goods and Services.
- (b) In all situations, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods and Services supplied to You (to the extent that is permitted by law).
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You for Loss in relation to the Goods and Services if:-
  - i) Goods and Services have not been paid for;
  - ii) Goods have been abused, misused or neglected by You;
  - iii) You have used Goods and Services other than for the purposes for which they were designed, including for an illegal purpose;

- iv) Goods have been repaired or modified by someone other than Us;
  - v) Goods have been subject to abnormal conditions, including improper site preparation, improper care or cleaning, chemicals, environment, temperature, fire, damage, pressure or other stress; and
  - vi) A defect has arisen due to Your failure to use and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards;
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods and Services and any Additional Expenses.

**12. INDEMNITIES**

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) Specifically, You must indemnify Us and hold Us harmless (or Our agents, employees or contractors) from:
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Goods and Services;
  - iii) Any loss and damage incurred by Us as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Us to deliver the Goods and Services (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;
  - vi) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant and accurate information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

**Ending the Agreement**

**13. DISPUTE RESOLUTION**

- (a) If a dispute arises between the parties, the following procedure applies:
  - i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
  - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;
  - iii) Either party must not oppose any application for a stay of any

legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;

- iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
- v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
- vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

#### 14. TERMINATION

- (a) By giving You written notice, We can:
  - i) Suspend or cancel supply of Goods and Services (including or any current Order for Goods and Services);
  - ii) Suspend or terminate Your Credit Account, if You have one;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default with any credit reporting agency, where applicable;
  - v) Enforce Our rights under any Security Interest;
  - vi) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
  - i) You have not paid for Goods and Services and any Additional Expenses by the Due Date;
  - iii) You exceed the limit of Your Credit Account;
  - iv) You breach a material term of these Terms;
  - v) Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms;
  - vi) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
  - vii) You engage in illegal activity related to the Goods and Services;
  - viii) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
  - ix) An Insolvency Event occurs.
- (c) You may terminate these Terms immediately by written notice if We are in breach of a material clause of these Terms and We do not rectify the breach within 7 days of Your notice.
- (d) If We exercise Our Termination Rights or these Terms are terminated, We may:
  - i) recover any of Our property, unpaid Goods, materials and all related data, documentation and records in Your possession, custody or control;
  - ii) recover from you the amount of any Loss sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have

conferred on the terminating party;

- iii) be regarded as discharged from any further obligations under these Terms; and
- iv) pursue any additional or alternative remedies provided by law.

### General Information

#### 15. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected.

#### 16. GENERAL

- (a) In addition to any other delivery method, You agree to receive Invoices via email.
- (b) You agree to accept service of notices under the *Building Industry Fairness (Security of Payment) Act 2017* (QLD) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Goods and Services were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by that legislation).
- (c) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions (Queensland) Act 2001* ("ETA").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email
- (f) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (g) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (h) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (i) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (j) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (k) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

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