

CONFIDENTIAL



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**Markforce International Pty Ltd (T/A Markforce) &  
ECOGROUP PTY LTD (T/A ecocanopy)  
Application for Credit**

Markforce International Pty Ltd ACN 118108875  
& Ecogroup Pty Ltd ACN 151974060  
14 Healey Road  
Dandenong South  
Victoria 3175  
Telephone: (03) 8791 8900  
Fax: (03) 9706 4235  
Email: [accounts@markforce.com.au](mailto:accounts@markforce.com.au)

# How to Complete these Forms

## 1. This Credit Application consists of the following parts:

- Part 1: Credit Application
- Part 2: Deed of Guarantee and Indemnity
- Part 3: Applicant Authority and Acknowledgment
- Part 4: Terms and Conditions of Sale

**IMPORTANT:** *If you do not understand any part you should seek legal advice*

## 2. Credit Application

- Complete all of sections 1, 2, 6, 7, 8 and 10
- If you are applying as a sole trader, complete section 3
- If you are applying for your company, complete section 4
- If you are applying as a trustee (corporate or individual), complete section 5
- Read section 9 carefully
- Fill in authorised signatories names, positions and sign and date section 11
  - If you are a sole trader, you must sign
  - If you are applying as a partnership, all partners must sign
  - If you are applying for your company, all directors must sign
  - If you are applying as individual trustee, all individual trustees must sign
  - If you are applying for a company trustee, all directors must sign

**IMPORTANT:** *By signing, you are agreeing to be bound by the Terms and Conditions of Sale*

## 3. Personal Guarantee

- If you are a sole trader or partnership, you need not sign this form
- If you are applying for your company, all **directors** and the **directors' spouses** must sign
- If you are applying as a trustee, all trustees must sign
- For more than 2 Guarantors, additional Guarantors must sign a copy of the form
- Each signature must be witnessed by an independent witness

**IMPORTANT:** *All parties who sign the guarantee become personally responsible instead of, or as well as, the Applicant to pay all amounts which the Applicant owes the Companies as well as the Companies' costs and expenses in enforcing the guarantee. .  
Before signing, each guarantor should:*

- *obtain independent legal advice*
- *consider obtaining independent financial advice*
- *make his or her own enquiries about the credit worthiness, financial position and honesty of the Applicant.*

## 4. Privacy Act Consent Forms

- If you are a sole trader you must sign this form
- If you are a partnership, all partners must sign this form
- If you are applying for your company, all directors must sign
- If you are applying as individual trustees, all individual trustees must sign
- If you are applying for a company trustee, all directors must sign

## 5. When finished

When all parts have been signed, please keep a copy for yourself but **return all original parts** to the Companies.

For any queries relating to this application please contact the person who sent them to you.

PART 1: CREDIT APPLICATION

**1. THE APPLICANT**

Applicant Name: \_\_\_\_\_ ABN: \_\_\_\_\_

Trading Name (if different from applicant): \_\_\_\_\_ Date business commenced: \_\_\_\_\_

Principal business address: \_\_\_\_\_

Delivery Address (if different from Principal business address): \_\_\_\_\_

Contact Name: \_\_\_\_\_ Position: \_\_\_\_\_

Tel No: \_\_\_\_\_ Fax No: \_\_\_\_\_ Email: \_\_\_\_\_

**2. OPERATING STRUCTURE**

*tick appropriate*

- Pty. Ltd.                       Sole Trader                       Corporation as Trustee
- Public Co.                       Partnership                       Individual(s) as Trustee

*If an individual / sole trader, please complete part 3*

**3. INDIVIDUAL / SOLE TRADER DETAILS**

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Drivers Licence Number: \_\_\_\_\_  Copy of Drivers Licence Attached

*If a company or partnership, please complete part 4*

**4. DIRECTOR, PARTNER AND INDIVIDUAL TRUSTEE DETAILS**

*provide details of all directors (for company or corporate trustee), partners or individual trustees*

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

*if more than 3 please attach details*

*If the Applicant acts as trustee, please complete part 4*

**5. TRUST DETAILS**

Name of Trust: \_\_\_\_\_ ABN: \_\_\_\_\_

Type of trust:     Family/Discretionary     Unit     Other (*Details* \_\_\_\_\_)

*If a unit trust, please provide details of all unitholders*

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

*if more than 3 please attach details*

**6. APPLICANT'S FINANCIAL DETAILS**

Estimated Monthly purchases \$ \_\_\_\_\_ Total Credit required: \$ \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Relationship Manager: \_\_\_\_\_ Tel: \_\_\_\_\_

Is there any security held over the Applicant:     No     Yes, *if so please completed the following.*

*Details of security (e.g. Mortgages, Debentures, Bill of Sale provided by Applicant over its business or property to third parties)*

Type of security: \_\_\_\_\_ provided to: \_\_\_\_\_

Type of security: \_\_\_\_\_ provided to: \_\_\_\_\_

*if more than 2 please attach details*

Accountant: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_

Business Premises:       Owned               Leased

If leased, from whom : \_\_\_\_\_

**7. BUSINESS HISTORY**

*For all of the directors, partners, trustees or sole trader:*

Have any been declared bankrupt?     Yes     No    If yes, details: \_\_\_\_\_

Have any been involved in business that have failed or been liquidated     Yes     No    If yes, details: \_\_\_\_\_

Names of related or subsidiary companies or partnerships: \_\_\_\_\_

**8. TRADE/BUSINESS REFERENCES**

*3 trade or business references must be provided from current major suppliers that are providers of commercial credit*

1. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

2. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

3. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

**9. TERMS OF CREDIT**

Credit will not be provided until the Companies accept this application and has provided written confirmation to the Applicant. The credit limit may be adjusted without prior notice, at the Companies' sole discretion, in the event that the Companies consider the Applicant to be a credit risk, is in breach of the Terms and Conditions of Sale or is inactive for a period greater than 12 months. If the Companies accept this application, any provision of goods and services to the Applicant by the Companies is subject to the **Terms and Conditions of Sale** attached.

**10. EXECUTION**

By signing this application for credit, the Applicant:

- Acknowledges having been provided with Terms and Conditions of Sale and having read and understood them.
- Acknowledges that it has been advised to seek legal and financial advice prior to signing this Application.

*if company or corporate trustee – all directors must sign*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*if partnership or individual(s) (whether or not as trustee) - all partners and individuals must sign*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*If more than 2 directors or individuals, please have additional directors/individuals sign a copy of this page*

**PART 2: DEED OF GUARANTEE AND INDEMNITY**

TO: Markforce International Pty Ltd (ACN 118 108 875) & Ecogroup Pty Ltd (ACN 151 974 060) both of 31 Michellan Crt, Bayswater Victoria 3153 ("**the Companies**")

In consideration for the Companies supplying goods and services to the Applicant on credit I/We,

(Name) \_\_\_\_\_ Of (Address) \_\_\_\_\_

(Name) \_\_\_\_\_ Of (Address) \_\_\_\_\_

(Name) \_\_\_\_\_ Of (Address) \_\_\_\_\_

as joint and several guarantor(s) ("**the Guarantor**") agree to be personally bound to the following.

**The Guarantor hereby:**

- 1. Jointly and severally guarantees to the Companies the due and punctual payment of all money presently owing or any money that may be owing in the future by the Applicant, in respect of the cost of goods or services supplied by the Companies to the Applicant and any other sums payable by the Applicant to the Companies pursuant to the Companies Terms and Conditions of Sale (hereinafter collectively called "**Guaranteed Money**").
  - (iii) the death or bankruptcy or winding up of the Applicant or any other Guarantor.
- 2. Jointly and severally agrees to indemnify and keep the Companies indemnified from and against all losses, costs, charges and expenses whatsoever that the Companies may suffer or incur in relation to the supply of goods or services to the Applicant and further agrees that each of the Companies' Terms and Conditions will apply to the indemnity hereby given by the Guarantor.
- 3. Covenants, acknowledges and agrees as follows:
  - (a) The provisions of this guarantee shall continue until payment to Companies of the whole of the Guaranteed Money as cleared funds.
  - (b) The Guarantor is liable hereunder as a principal and as a primary debtor for the payment of the Guaranteed Money to the Companies.
  - (c) This guarantee is valid and enforceable against the Guarantor and the liability hereunder of the Guarantor continues and may be enforced by the Companies notwithstanding:
    - (i) that no steps or proceedings have been taken against the Applicant or any other Guarantor;
    - (ii) any indulgence or extension of time granted by the Companies to the Applicant or any other Guarantor;
- 4. The Guarantor hereby acknowledges having given its consent to the Companies to obtain from a credit reporting agency a consumer credit report containing information about it for the purpose of the Companies assessing whether to accept the Guarantor as a guarantor for credit that may be applied for by the Applicant.
- 5. In consideration of the Companies providing goods to the Applicant, I/We hereby grant the Companies a charge over all of my/our present and after acquired property, including but not limited to a caveatable charge over all real estate, as security for the guarantee granted by Me/Us.
- 5. The term "the Companies" includes their successors, and assigns and any related entity of the Companies involved in the provision of goods and services to the Applicant. The terms "Applicant" and "Guarantor" include their respective executors, administrators and successors.
- 6. In this guarantee the singular includes the plural and if there is more than one Guarantor to this guarantee their obligations are joint and several.

Signed by the Guarantors(s)	
Signature: .....	Date: .....
Name: .....	
Signature: .....	Date: .....
Name: .....	
Signature: .....	Date: .....
Name: .....	

**PRIVACY ACT 1988**

**PART 3: APPLICANT AUTHORITY AND ACKNOWLEDGEMENT**

TO: Markforce International Pty Ltd (ACN 118 108 875) & Ecogroup Pty Ltd (ACN 151 974 060) both of 31 Michellan Crt, Bayswater Victoria 3153 (“the Companies”)

**Credit information that may be provided to a credit reporting agency:**

The Companies may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- \* to obtain a consumer credit report about me/us, and/or
- \* to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- \* identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers license number;
- \* my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount;
- \* the fact that the Companies provide credit to the Applicant;
- \* payments which are overdue by more than 60 days, and for which debt collection has started;
- \* advice that payments are no longer overdue in respect of any default that has been listed;
- \* information that, in the opinion of the Companies I/we have committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with my/our credit obligations;
- \* dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once.

**Assessment of Commercial Credit Application**

I/we agree that the Companies may obtain a consumer credit report containing information about me/us from a credit reporting agency, and may conduct a search of the *Personal Property Securities Register* for the purpose of assessing my/our application for commercial credit.

**Disclosure to guarantor**

I/we agree that the Companies may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or the Companies keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

**Exchange of credit worthiness information**

I/we agree that the Companies may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency:

- \* to assess an application by me/us for credit
- \* to notify other credit providers of a default by me/us
- \* to exchange information with other credit providers as to the status of my/our credit facility with the Companies where I/we are in default with other credit providers
- \* to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Privacy Act 1988 (Cth)**

I/we understand that under the requirements of the *Privacy Act* 1988 (Cth), the Companies will ensure that all credit and personal information obtained about me/us will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorised access, use, modification or disclosure and any other misuse. I/we also understand that such information will be made available for viewing or amendment by me/us upon request to the Companies.

**Signing to be signed by the Applicant, directors of the Applicant and the Guarantors**

Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____

*If more than 2 directors or individuals, please have additional directors/individuals sign a copy of this page*

**PART 4: TERMS AND CONDITIONS OF SALE****1. Definitions**

In these conditions:

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act* 2010 (Cth) and its associated Regulations as amended.

"**Agreement**" means any agreement for the provision of Goods and/or Services by the Company to the Applicant.

"**Applicant**" means the entity, jointly and severally if there is more than one, acquiring Goods or Services from the Company.

"**Company**" means Markforce International Pty Ltd (ACN 118 108 875) and/or Ecogroup Pty Ltd ACN 151 974 060 both of 31 Michellan Crt, Bayswater VIC 3153 (being the entity who has from time to time entered into an Agreement to supply Goods and Services to the Applicant).

"**Goods**" means goods supplied by the Company to the Applicant.

"**GST**" has the meanings used in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth), as amended or in place from time to time.

"**Intellectual Property**" means all copyright, patents, trademarks, designs, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) owned or licensed by the Company in respect of the Goods and Services.

"**Loss**" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

"**Manufacturer**" means the manufacturer of the Goods supplied by the Company.

"**PPSA**" means the *Personal Property Securities Act* 2009 (Cth) and its associated Regulations as amended.

"**PPSR**" means the securities register in place pursuant to the PPSA.

"**Price List**" means the price list issued by the Company from time to time.

"**Services**" means services supplied by the Company to the Applicant.

"**Terms**" means these Terms and Conditions of Sale.

**2. Basis of Agreement**

2.1 Unless otherwise agreed by the Company in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other conditions, including the Applicant's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Company to the Applicant for the proposed supply of Goods or Services is:

(a) valid for 60 days;

(b) an invitation to treat only;

(c) only valid if in writing.

2.3 The Terms may include additional terms in the Company's quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by the Company when the Company accepts in writing or electronic means an offer from the Applicant or provides the Applicant with the Goods or Services.

2.5 The Company in its absolute discretion may refuse to accept any offer.

2.6 It is the Applicant's responsibility to provide the Company with its specific requirements in relation to the Goods and Services.

2.7 The Company may vary or amend these terms at any time, with any such changes or amendments notified at [www.ecocanopy.com.au](http://www.ecocanopy.com.au). The Applicant acknowledges that they have read the latest Terms prior to placing any order for Goods or Services.

2.8 Where the Applicant's order is placed on behalf of a third party principal, the Applicant agrees to be bound, as principal, to these Terms.

2.9 Where the Applicant is the trustee of a trust, the Applicant agrees that it is bound to these Terms as trustee and in its own capacity.

**3. Pricing**

3.1 Prices quoted, whether in the Price List, by written quotation or verbally, for the supply of Goods and Services, exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Applicant must pay any GST and any other taxes or duties imposed on the Goods and Services.

3.2 If the Applicant requests any variation to the Agreement, the Company may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by the Company in relation to the Goods or Services, the Company may vary its price to take account of any such change, by notifying the Applicant.

**4. Payment**

4.1 Unless otherwise agreed in writing:

(a) Payment for the Goods and/or Services must be made within 30 days of the end of month in which the Company's invoice is raised (Account holders only); and

(b) The Company reserves the right to require payment in full prior to the delivery of the Goods or completion of the Services.

4.2 The Company, at its sole discretion, may offer a discount on the price of Goods (excluding freight charges) for cash payment.

4.3 Payment is not deemed received until the proceeds have cleared.

4.4 Merchant or other fees incurred as a result of payment by credit card will be charged to the Applicant's account.

4.5 Payment terms may be revoked or amended at the sole discretion of The Company immediately upon giving written notice to the Applicant.

**5. Interest**

5.1 If the Applicant defaults in payment by the due date of any amount payable to the Company, then the Company may charge the Applicant interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act* 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full.

**6. Passing of Property**

6.1 Until full payment in cleared funds is received by the Company for all Goods and Services supplied by it to the Applicant, as well as all other amounts owing to the Company by the Applicant:

(a) title and property in all Goods remain vested in the Company and do not pass to the Applicant;

(b) the Applicant must hold the Goods as fiduciary bailee and agent for the Company;

(c) the Applicant must keep the Goods separate from its goods and maintain the labelling of the Company;

(d) the Applicant is required to hold the proceeds of any sale of the goods on trust for the Company in a separate account with a bank to whom the Applicant has not given security however failure to do so will not affect the Applicant's obligation as trustee; and

**PART 4: TERMS AND CONDITIONS OF SALE**

(e) in addition to its rights under the PPSA, the Company may without notice, enter any premises where it suspects the Goods may be and

remove them, notwithstanding that they may have been attached to other goods not the property of the Company, and for this purpose the Applicant irrevocably licences the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action.

## **7. Security**

7.1 In consideration for the Company supplying Goods and Services to the Applicant on credit, the Applicant hereby charges, in favour of the Company, all of its estate and interest legal and equitable in any real estate owned by the Applicant wheresoever situate.

7.2 The Applicant acknowledges that these Terms constitute a security agreement for the purposes of the PPSA.

7.3 Until such time as the Company receives payment in full for all monies payable to it by the Applicant, and title in the Goods passes to the Applicant in accordance with condition 6.1, the Applicant hereby expressly grants the Company a security interest in all its present and after acquired property, including all Goods (and their proceeds) previously supplied by the Company to the Applicant (if any) and in all future Goods supplied by the Company to the Applicant ("**the Security Interest**").

7.4 The Company and the Applicant acknowledge that provision of the Goods and Services on credit shall constitute a Purchase Money Security Interest under the PPSA.

7.5 At any time between the time the Applicant accepts these Terms and title in the Goods passes to the Applicant in accordance with condition 6.1, the Applicant shall provide all relevant information and do all things necessary to enable the Company to register the Security Interest on the PPSR. The Applicant further acknowledges that it will not, or not allow, another security interest to be registered on the PPSR prior to the Company registering the Security Interest.

7.6 Upon receipt of all monies owing to the Company by the Applicant, the Company undertakes to access the PPSR and release the Security Interest granted by the Applicant.

7.7 Until such time as title in the Goods has passed to the Applicant and the Security Interest has been released by the Company, the Applicant acknowledges that it waives its rights in respect of the following, to the full extent permitted by the PPSA:

- (a) to require that the Company request its prior written consent in respect of dealing with the Goods;
- (b) to receive notices; and
- (c) to receive verification statements.

7.8 The Company and the Applicant acknowledge that confidentiality shall not apply to the extent required for compliance with Part 8.4 of the PPSA and for the purpose of allowing the Company to obtain a credit report in respect of the Applicant.

7.9 The Applicant acknowledges that it must give notice of the Security Interest to a third party when seeking to sell the Goods to a third party in the ordinary course of its business.

## **8. Risk and Insurance**

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Applicant immediately on the Goods being delivered to the Applicant from the Company.

8.2 The Goods are sold to the Applicant on the basis that the Applicant has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods or Services.

8.3 The Applicant assumes all risk and liability for loss, damage or injury to persons or to property of the Applicant, or third parties arising out of the use or possession of any of the Goods sold by the Company, unless recoverable from the Company on the failure of any statutory guarantee under the ACL.

## **9. Performance of Agreement**

9.1 Any period or date for delivery of Goods or provision of Services stated by the Company is intended as an estimate only and is not a contractual commitment. The Company will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services but will in no circumstances whatsoever be liable for any Loss suffered by the Applicant or any third party for failure to meet any estimated date.

9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Applicant or its employee or agent will be proof of delivery of Goods invoiced.

## **10. Delivery**

10.1 The Company will nominate and coordinate a carrier on the Applicant's behalf unless otherwise instructed by the Applicant.

10.2 The Applicant will inform the Company of all necessary details so that the Company can affect the delivery of the Goods.

10.3 The Applicant may nominate its own carrier, in which case it must coordinate the delivery with the Company.

10.4 Unless otherwise agreed in writing, the Applicant will be responsible for all costs associated with delivery, including any special packaging or required crating, freight, insurance and other charges arising from the point of despatch of the Goods to the Applicant to the point of delivery.

10.5 The Applicant must provide reasonable and proper access to the location specified for delivery.

10.6 Any extra carrier charges due to difficult access, wrong or misleading instructions provided by the Applicant, frustrated delivery, or the requirement for extra personnel, will be charged to Applicant at cost plus a 10% service fee plus GST charged by the Company.

10.8 If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that the Goods are ready, the Applicant shall be deemed to have taken delivery of the Goods from such date. The Applicant shall be liable for storage charges payable monthly on demand.

10.9 If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that the goods are ready, the Applicant shall be deemed to have taken delivery of the goods from such date. The Applicant shall be liable for storage charges payable monthly on demand.

10.10 Where it is necessary for the Company to deliver the Goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost and responsibility of assembly and installation will fall to the Applicant.

10.11 The Applicant must advise the Company in writing within 3 days of receipt:

- (a) of the non-arrival of any or all of the goods;
- (b) if there is damage to the goods;
- (c) that the wrong goods have been received;

## **PART 4: TERMS AND CONDITIONS OF SALE**

(d) that the quantity of the goods is incorrect; or

(e) the goods do not meet specifications.

## **11. Returns**

11.1 Goods may only be returned to the Company:

- (a) with the prior written authority of the Company;
- (b) if the Goods are not optioned or customised in any way or produced to a specific Applicant requirement;



- (c) if the request to return is made in writing to the Company within 3 days of delivery, stating reason for the requested return;
- (d) if the Applicant pays for all transport and handling costs to the Company's warehouse;
- (e) on the acceptance of the application of a restocking and handling charge, such charge being a minimum of 30% of the invoice value, except where the wrong Goods were delivered by the Company, in which case there will be no restocking or handling charge; and
- (f) if the Goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of the Company.

## **12. Cancellation**

12.1 If The Company is unable to deliver or provide the Goods or Services, then the Company may cancel the Applicant's order (even if it has been accepted) by written notice to the Applicant.

12.2 No purported cancellation or suspension of an order or any part thereof by the Applicant is binding on the Company after that order has been accepted.

12.3 The Company, in its absolute discretion may review, alter or terminate the Applicant's credit limit or payment terms without notice.

12.4 If the Applicant cancels the order after acceptance by the Company, then the Company will be entitled to claim any Loss from the Applicant arising from the cancellation.

## **13. Specifications**

13.1 All specifications, drawings, illustrations descriptive matter and particulars contained in the Company' catalogues, website and marketing documents are indicative only, do not form part of any Agreement between the Company and the Applicant, and are not representations or warranties of any kind. Any discrepancy will not entitle the Applicant to rescind an Agreement or seek compensation or damages.

13.2 The Company reserves the right to make minor modifications to its Goods without notice to the Applicant and deliver such modified Goods against any existing order.

13.3 The Applicant must not reverse engineer any Goods provided to it by the Company.

13.4 All drawings, descriptive matter and particulars supplied, remain the Company's property and are to be returned to the Company on demand. The Applicant must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without the Company's prior consent in writing.

## **14. Intellectual Property**

14.1 The Applicant acknowledges that it has no proprietary right or interest in the Intellectual Property.

14.2 The Applicant must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trademarks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

14.3 The Applicant must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property.

14.4 Any Intellectual Property provided to the Applicant by the Company in connection with the Goods and Services remains the exclusive property of the Company and must be returned to the Company on demand and must not be copied or communicated to any third party without the express written consent of the Company.

## **15. Liability / Warranty**

15.1 Except only for rights which the Applicant has in respect of the supply of Goods and Services under the ACL and other applicable laws and which cannot be lawfully excluded, restricted or modified, the Applicant agrees that:

(a) all conditions and warranties whether statutory or otherwise are excluded in relation to the Goods and Services; and

(b) the Company will not be liable for any Loss which the Applicant suffers, incurs or is liable for in connection with supply of the Goods or Services under these Terms.

15.2 Where the Company is not permitted under the ACL or other applicable laws to exclude, restrict or modify its liability for the breach of a condition or warranty that is implied by the ACL or any other applicable laws but is permitted to limit its liability for the breach of such condition or warranty the Company's liability is limited to any one of the following as determined by the Company:

(a) the replacement of the Goods or Services or the supply of equivalent Goods; or

(b) the payment of the cost of replacing the Goods or Services or of acquiring equivalent Goods or Services.

15.3 The Applicant acknowledges that it has not relied upon any representation made by the Company which has not been stated expressly in these Terms. The Applicant indemnifies the Company against all Loss incurred by the Company in connection with any act or omission of the Applicant, including, but not limited to, negligence of the Applicant or any unauthorised representation made or warranty given by the Applicant in connection with Goods or Services or any modification, misuse, abuse or tampering with the Goods or Services.

15.4 In addition to condition 15.3, the Applicant acknowledges that it has not relied upon the Company in respect of the fitness for purpose of the Goods or Services. The Applicant has made its own enquiries in respect of the fitness of the Goods or Services for a particular purpose and has appraised itself of the Manufacturer's recommendations for use of the Goods.

15.5 Where the Applicant mixes or co-mingles the Goods with any other goods, the Applicant warrants that it has the requisite knowledge and skill to use the Goods in that manner and indemnifies the Company in respect of any Loss arising from that use of the Goods.

15.6 The Company shall not be liable to the Applicant in respect of any reasonable variation between any sample and any Goods supplied to the Applicant.

## **PART 4: TERMS AND CONDITIONS OF SALE**

## **16. Force Majeure**

16.1 Where the Company is unable, wholly or in part, by reason of an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, unavailability or delay in availability or equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Company ("Force Majeure") to carry out any obligation under an Agreement, the Company will notify the Applicant of that Force Majeure and the performance of the Company's obligations will then be suspended so far as it is affected by force majeure during the continuance thereof.

## **17. Rescission**

17.1 The Company shall be entitled to rescind this contract if the Applicant fails to comply with these Terms or any other Agreement between the Company and the Applicant for the sale and purchase of Goods and Services from time to time. Such contracts are collateral hereto and any default by the Applicant under another contract shall be default hereunder. This condition may not be waived or abrogated other than in writing by the Company.

17.2 The performance of the terms of an Agreement by the Company shall not be taken as a waiver of any rights of the Company in respect of any other contract with the Applicant.

## **18. Termination**

18.1 It is an event of termination if:

- (a) the Applicant breaches or fails to observe any of the terms of these Terms;
- (b) the Applicant trades outside the terms and conditions of the Applicant's credit facilities (if any);
- (c) the Applicant becomes insolvent, the Applicant or the guarantor of the Applicant enters into liquidation/bankruptcy or the Company notifies in writing the Applicant of its view that the Applicant is in financial difficulties;
- (d) an administrator or receiver is appointed over all or any of the business undertaking of the Applicant.
- (e) any guarantor of the Applicant's indebtedness to the Company revokes its guarantee; or
- (f) the Applicant fails to provide the Company with at least 14 days prior written notice of any proposed change of ownership of the Applicant or any other change in the Applicant's details.

18.2 If an event of termination as specified in condition 18.1 occurs the Company will:

(a) have an immediate right to possession of Goods held by the Applicant and all amounts owing by the Applicant in respect of the Goods together with the Debts owing by the Applicant to the Company will become due and payable and must be paid by the Applicant on demand by the Company; and

(b) be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:

- (i) suspend indefinitely all further deliveries of Goods and Services in respect of any order being processed for delivery and cancel any order or refuse to accept any further orders;
- (ii) cancel any credit facility provided to the Applicant;
- (iii) require the return of all Goods the property in, and ownership of, has not passed in accordance with condition 6;
- (iv) cease supply of Goods or Services to the Applicant.

18.3 The Company will not be liable for any Loss (including Loss arising from negligence) suffered by the Applicant as a result of the Company taking any action under this condition.

18.4 In the event of default of payment by the applicant in accordance with condition 18.1 hereof all debt recovery costs including legal costs on a solicitor/own client basis and any mercantile agent costs shall be deemed to be part of the indebtedness of the Applicant to the Company. A certificate signed by a director or a secretary for the time being of the Company as to any sum payable to the Company pursuant to this condition shall be conclusive evidence and proof of indebtedness the Applicant to the company at the time of the such certificate.

## **19. Severance**

19.1 The Company considers the Terms to be valid and reasonable and each term and condition is severable and independent. If any condition is considered to be unreasonable in any circumstance or invalid because it does not comply with any law that condition will be read down so as to give it legal effect. If this is not possible these Terms will apply to the Agreement as if the condition considered to be unreasonable or invalid has been deleted.

## **20. Governing Law**

20.1 An Agreement subject to these Terms, is made in Victoria, Australia and the parties agree to submit all disputes arising between them to the jurisdiction of the courts of Victoria, Australia.

20.2 Notwithstanding condition 20.1, the Company may at its sole election submit a dispute to the jurisdiction in which the Applicant maintains its principal place of business or the jurisdiction where the Goods and Services have been supplied.