

## Terms and Conditions

### 1. Definitions

**Controller** means each abovenamed controller.

**Credit Application** means the credit application completed by You together with these Terms and Conditions (as amended or varied from time to time).

**Insolvency Event** includes liquidation, provisional liquidation, administration, bankruptcy, being taken under s 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, having a controller (within the meaning of the *Corporations Act 2001* (Cth)) or a similar person appointed to You, ding, ceasing to be of full legal capacity, becoming incapable of managing your own legal or financial affairs, being unable to pay Your debts as and when due or, taking any step which would result in any of the aforementioned events.

**Our, Us, We** means *Eco Building Supplies Pty Ltd ABN 90 124 035 810*.

**You, Your** means the business named on the Credit Application.

### 2. Application

- (a) This Credit Application applies if We accept any order for goods or services from You whether for cash or on credit.
- (b) Each Controller executes this Credit Application in his/ her personal capacity and also for and on behalf of You.
- (c) You and each Controller represent that information on this Credit Application is true, correct and not misleading.
- (d) Our acceptance of this Credit Application does not oblige us to provide credit to You. The provision of credit is at all times in Our sole discretion.
- (e) If You did not execute a Credit Application Form, then Clauses 2(b) to 2(d) (inclusive) and Clause 8 do not apply to you. In addition, any reference to Controllers is disregarded.

### 3. Privacy

- (a) You and each Controller acknowledges that we may obtain credit information about the personal, consumer and commercial creditworthiness of any of you from the above Trade References and from a credit reporting agency.
- (b) You and each Controller acknowledges that we may use disclose or exchange with other credit providers information about Your credit arrangements in order to monitor credit worthiness, collect overdue Advances and otherwise report on your creditworthiness to others.

### 4. Terms of Sale

- (a) We are not bound by any error or omission made by us on a quotation, invoice, price list or similar.
- (b) Our prices are subject to change without notice. Although, We will endeavour to give 30 days' notice where possible; we are not obliged to do so. All published prices are recommendations only, those published prices are not an offer to sell at that published price and there is no obligation upon Us to uphold that published price.
- (c) All goods which are delivered by Us are subject to a freight charge which will be recovered from you.
- (d) We are not responsible for the late or non-delivery of goods.
- (e) While We will use reasonable endeavours to keep you apprised of the freight charge for delivery, those freight charges are outside of Our control and We are entitled to recover those freight charges irrespective of whether or not we have notified you of the same.
- (f) Except to the extent that Clause 5 applies, we have an absolute discretion whether or not to accept a return of goods. We may charge a restocking fee for accepting such a return in our absolute discretion.

### 5. Warranty and Limitation of Liability

- (a) All goods are warranted by their relevant manufacturer. You should make yourself aware of the terms of that warranty.
- (b) You may also have certain inalienable consumer guarantees under the *Australian Consumer Law*. To the extent that those rights are inalienable, this Credit Application does not affect those rights.
- (c) To the extent that the consumer guarantees apply, We may choose in our absolute discretion to:
  - (i) replace the goods or the supply with equivalent goods;
  - (ii) repair the goods;
  - (iii) pay the cost of replacing the goods or of acquiring equivalent goods; or

- (iv) pay the cost of having the goods repaired.
- (d) Otherwise, We accept no liability for the goods and services provided by us and provide no further warranties regarding goods or services provided (including, without limiting, liability for loss of profits, consequential loss or damage, special damages, exemplary damages, punitive damages or any other loss or damage of a like nature.

## 6. Title

- (a) Risk in any goods supplied by Us passes upon delivery to You.
- (b) We retain legal and equitable title in all goods supplied by us to you until full payment is received by Us for those goods. Notwithstanding our title, You may sell and use those goods in any manufacturing process in the ordinary course of your business provided that the proceeds from the sale or from that use must be held by You separately on trust for Us and You must account to us for those proceeds.
- (c) This interest created by clause 4(b) is a purchase money security interest within the meaning of the *Personal Properties Securities Act 2009* (Cth). You must do anything required by Us of You in order to ensure that our purchase money security interest is continuously perfected. You agree that we may register our purchase money security interest on the *Personal Properties Securities Register*.
- (d) In order to enforce our title, You and each Controller grant Us a licence to enter any property which you may enter in order to repossess, collect and take possession of those goods.

## 7. Granting of Credit

- (a) If We accept an order for goods or services from You on credit (each, an **Advance**). You must pay without any deduction or setoff the amount of that Advance within 30 days of the last day of the month of the date of an invoice rendered by us.
- (b) However, if you suffer an Insolvency Event, all Advances become immediately due and payable.
- (c) If you do not pay an Advance as and when it falls due:
  - (i) That Advance will incur interest at a rate of 10% above the Reserve Bank of Australia Cash Rate calculated daily (up to a limit of 20% per annum).
  - (ii) You must pay to us all costs and expenses (including legal costs on a full indemnity basis) incurred by us in connection with the recovery of that Advance and any interest thereon.

## 8. Guarantee and Indemnity

- (a) Each Controller acknowledges that, it is to that Controller's benefit that potential Advances under this Credit Application subsists.
- (b) The Controllers jointly and severally guarantee payment of all Advances now or in the future owing by You to Us.
- (c) The Controllers also jointly and severally guarantee performance of Your obligations to Us.
- (d) In addition to and separate from those guarantees, the Controllers jointly and severally indemnify Us against all costs, losses and expenses which We incur because of a default of You.
- (e) These guarantees and indemnities are continuing and are not affected if:
  - (i) We grant any extension of time or indulgence to You; or
  - (ii) We vary the terms of Your account (even if this increases the Controllers' liability); or
  - (iii) by any Controller being released from this guarantee and indemnity; or
  - (iv) because this guarantee and indemnity is unenforceable against one or more Controllers; or
  - (v) any payment by You later being avoided by law whether or not We have been given notice of these matters.
- (f) This Credit Application is binding on the Controllers that execute this Credit Application even if any one or more other Controllers does not execute this Credit Application.
- (g) You and each Controller charges all legal and equitable interests (both present and future) of whatsoever nature held in any and all real property to Us. Without limiting the generality of this charge, You and each Controller must execute any documents and do anything reasonably required by Us to perfect this charge. You and each Controller permit us to lodge a caveat against any such real property noting this charge.
- (h) We may exercise our rights against any one or more Controllers even if:
  - (i) We do not exercise our rights against any other one or more Controllers; or
  - (ii) We do not exercise our rights against You.

## 9. Miscellaneous

- (a) This Credit Application is governed by the laws of the State of South Australia.
- (b) You and we submit to the non-exclusive jurisdiction of the Courts of South Australia and the Courts of the Commonwealth of Australia (and where possible in their Adelaide registry).
- (c) We may amend these Terms and Conditions from time to time at our absolute discretion by uploading the amended Terms and Conditions to:

[http://www.ecobuildingsupplies.com.au/images/pdfs/Terms\\_Conditions.pdf](http://www.ecobuildingsupplies.com.au/images/pdfs/Terms_Conditions.pdf).

Those amended Terms and Conditions take effect and are binding on and from the time that we upload them irrespective of whether or not we notify you of the same.