

# Terms and Conditions

## 1. General

This document details the terms and conditions under which the Company will supply product (the Goods) to the Applicant. The Company reserves the right to change its Terms and Conditions by giving written notice to the Applicant and such changes shall apply from that date to all future shipments.

## 2. Trading Terms

### 2.1 Quotations.

- a) A quotation, tender or price is valid for 30 days (unless noted otherwise stated in the quotation) but no contractual relationship shall arise until the Applicant's order has been accepted by the Company.
- b) Quotations are based on the current market prices at the time of offer, however should the Company's manufacturers / suppliers vary the price subsequent to acceptance of a given order, any increase in price will be passed on to the Applicant.
- c) Quotations specifically exclude Sales Tax or GST.
- d) The Company reserves the right to accept or reject at its discretion any order or offer to purchase from the Applicant. Only written acceptance by the Company of the Applicant's order or offer will constitute a contract of supply.

### 2.2 Delivery

- a) Delivery will be made to the location specified on the Company's invoice / delivery sheet and in accordance with terms quoted. The Company's responsibility ends at the required point of delivery.
- b) Delivery dates are forecast as accurately as possible and every endeavour will be made to effect delivery by the delivery date specified but may be subject to extensions without notice due to unforeseen delays caused by strikes, lock outs, breakdowns, accidents, delays in transport or in obtaining supplies, act of God, war, fire and other causes beyond the Company's control.
- c) To the fullest extent permitted by law, the Company will accept no responsibility for any loss of profits or damage arising out of non-delivery or failure to deliver the goods by the delivery date, non fitness for purpose of any goods, unless previously agreed in writing.
- d) The Company shall be entitled to recover from the Applicant any reasonable additional costs incurred by the Company due to the failure of the Applicant to accept the goods at the time of delivery.
- e) The Company warrants that the goods when delivered are of new and merchantable quality and will comply with the description and specifications as per the company's quotation.
- f) Upon delivery, the Applicant must check materials supplied for size and quality. The Applicant must satisfy himself as to the fitness of the goods and services for the particular purpose in question. The Applicant does not rely on any skill or judgement of the Company, or of any person on the Company's behalf by whom any antecedent negotiations are conducted, to satisfy himself as to said fitness. The Company does not accept any responsibility for any loss incurred arising out of work carried out on the goods.

### 2.3 Terms of Payment

Payment is due on all invoices Thirty (30) days from End of Month (EOM) in which the goods were supplied . The Company may exercise any of its rights under this agreement including the withdrawal of the credit facility and the withdrawal of all discounts previously allowed on outstanding accounts if payment has not been received by the due date.

## **2.4 Retention of Title**

- a) Property in and ownership of any goods supplied does not pass to the Applicant until all monies due to the Company by the Applicant for all goods supplied by the Company to the Applicant at any time has been paid in full. This clause shall have effect notwithstanding that the goods may have been used by the Applicant in some manufacturing, construction or other process.
- b) The Company accepts the risk of loss of, or damage to, the goods only up to the time that risk passes to the Applicant. Such risk passes to the Applicant upon delivery of the goods or upon title in the goods passing to the Applicant, whichever is the earlier.
- c) Until the Company receives payment in full for all goods supplied to the Applicant, the Applicant shall hold the goods as a fiduciary agent and/or bailee of the Company. The Applicant must store the goods separately from all other goods and ensure that the goods are clearly identifiable as the Company's goods.
- d) The Company may without prejudice to any other rights and without liability to any person in trespass or otherwise enter the premises of the Applicant where the goods are located and recover possession of the goods if: i) payment has not been made for all goods supplied by the Company to the Applicant at any time; or ii) the Applicant has a liquidator, provisional liquidator, receiver, receiver and manager, mortgagee's agent, administrator or deed administrator appointed to it or enters into any scheme of arrangement with its creditors or any other form of insolvency administration or (in the case of an individual) commits an act of bankruptcy.
- e) If before property in and ownership of the goods passes to the Applicant, the Applicant sells or otherwise deals with any interest in the goods in any form to a third party (including when the goods have been mixed with other goods by manufacturing or otherwise) the Applicant does so solely as a trustee for the Company. The Applicant will keep separate and hold on trust for the Company all monies received and property purchased with such monies from such sale or dealing as relates to the goods. Such part of any monies received (whether the goods have been sold or used in some manufacturing or construction process) that relates to the goods shall equal in dollar terms the total amount owing by the Applicant to the Company for the supply of any goods by the Company to the Applicant at the time of receipt of such monies.

## **2.5 Personal Property and Securities Act (PPSA)**

The Parties:

- a) agree that this agreement, under these terms and conditions, relating to the supply of goods and services, now or in the future creates a registrable security interest under the PPSA;
- b) acknowledge the right of the Company to register a security interest under the PPSA;
- c) acknowledge the right of the Company to exercise all of the remedies afforded to it as a secured party under the PPSA without prejudice to any other rights or remedies arising out of breach by you or any other party of any agreement with the Company.

## **2.6 Returns**

- a) The Company is not under any obligation to accept goods returned by the Applicant unless agreed in writing and the application for return has been submitted by the Applicant, within 30 days from the date of supply. The Company reserves the right to accept and or reject any goods returned without correct prior authority.
- b) Once the Company acknowledges approval of the return for credit, goods must be received at the Company premises within 2 weeks of the approval date, unless otherwise agreed in writing. Should this time frame not be met, the Company reserves the right to reject the credit request.
- c) Costs to return the goods to the Company's premises is the responsibility of the Applicant.
- d) The return of such goods will incur a 30% re-stocking fee and or \$150 whichever is the greater sum.

- e) On receipt of the goods at the Company's premises, they will be inspected to ensure they are in a good condition (as originally supplied), thereafter a credit will be processed in a timely manner. Credits will not be issued prior to receipt, inspection and acceptance of goods unless agreed otherwise.
- f) Where a credit request is the result of incorrect supply by the Company, the restocking fee and transport costs will not apply to the Applicant.

### **2.7 Terminating Credit account**

The Company may at any time at its discretion and without notice alter or suspend credit facilities. Upon termination all liabilities incurred by the Applicant become immediately due and payable by the Applicant.

### **2.8 Default**

The Applicant will be in default if:

- (a) fails to make payment in accordance to Clause 2.3;
- (b) fails in any material respect to comply with these Terms and Conditions;
- (c) being a body corporate it becomes an externally-administrated body corporate or has an application for winding up filed against it; and/or
- (d) being an individual, it commits an act of bankruptcy or becomes an insolvent under administration.

### **2.9 Consequences of Default**

If the Applicant Defaults, the Company may, with the provision of written notice:

- (a) cease all further deliveries; and/or
- (b) terminate any agreement in relation to Goods that have not been delivered; and/or
- (c) claim the return of any Goods in the Applicant's possession where title has not passed to the Applicant;
- (d) be indemnified by the Applicant against prosecution and claims for damages resulting from seizure of the Goods; and/or
- (e) withdraw or vary any credit the Company has provided to the Applicant

### **2.10 Interest on Late Payments**

The Company reserves the right to charge the Applicant interest on overdue monies at the rate of 2.0% p.a. above the published CBA Loan Index rate. All legal, debt recovery, and court costs are chargeable to the Applicant.

The Applicant acknowledges that the Credit Facility and Account number provided to the Applicant are personal to the Applicant and shall not be assigned, transferred or made available by it for use by any other corporation, person or organisation.

### **2.11 Indemnity**

The Applicant agrees to indemnify the Company and keep the Company indemnified against any claim that arises out of the goods and services supplied under this agreement. This indemnity includes any legal fees and expenses the Company incurs in order to enforce its rights, on an indemnity basis.

### **2.12 Limit of Liability**

The Company's liability to the Applicant (and any party claiming through the Applicant against the Company) for any claim for loss or damages (including legal expenses) made in connection with the order (including the supply of Goods described in the order) whether in contract, tort (including negligence), under statute, in equity or otherwise shall be strictly limited (except to the extent that the law prohibits such a limitation) to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of the Company).

### **2.13 Consequential Loss**

The Company shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where “indirect, special or consequential loss or damage” includes:

- (a) any loss of income, profit, production, contract, business opportunity or business;
- (b) any loss of goodwill or reputation;
- (c) any loss of value of intellectual property; or
- (d) any loss or damage resulting from the loss or damage to goods other than the Goods.

### **2.14 Trustee Capacity**

If the Applicant is the trustee of a trust (whether disclosed to the Company or not), the Applicant warrants to the Company that:

- (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Applicant has the right to be reasonably indemnified out of trust assets;
- (c) the Applicant has the power under the trust deed to sign this agreement; and
- (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Company.

### **2.15 Severance**

If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

### **2.16 Entire Agreement**

This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Company and the Applicant in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

### **2.17 Jurisdiction**

The Applicant acknowledges and agrees that this agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.

The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

**3. Certification by applicant**

I/We warrant that the Applicant is solvent, and agree to advise the Company of any change in the Applicant's financial position or credit worthiness which would have an effect on the Company continuing to offer a credit account. I/We hereby certify that the information supplied on this application is true and correct and should it subsequently be discovered that the information is false I/We acknowledge that the Company may immediately suspend any line of credit granted and place the account on a cash basis. I/We also agree that any credit obtained will be immediately paid to the Company on demand.

I/We agree that if the Company approves this application for credit, this agreement remains in force until the credit facility is withdrawn or cancelled. I/We hereby apply for a credit account with the Company and if granted, agree to be bound the the Terms and Conditions . I/We further agree that the Company may contact the listed references and such references are hereby authorised to convey to the Company any information requested.

Name of Applicant .....

Name of Authorised Officer.....Position.....

Signature.....Date.....

**Guarantee and Indemnity**

1. In consideration of Ozlinc Industries Pty Ltd (hereinafter called "the Company") at my/our request supplying goods and/or services from time to time.

Applicant's name ..... (the "Applicant")

I/We.....of.....(address)

And..... of.....(address)

And..... of.....(address)

(Hereinafter called the "Guarantor/s") hereby to unconditionally irrevocably guarantee on demand to the Company the due and punctual payment by the Applicant of any amount of money whatsoever owing and the Guarantor/s hereby indemnify the Company on demand against any monetary loss or damage the Company may sustain or incur as a result of any default by the Applicant in the due and punctual payment or as a result of any breach committed by the Applicant of the Company General Terms and Conditions (all of which are hereinafter referred to as the money hereby secured).

2. In relation to this Guarantee and indemnity the following provisions shall apply and it is hereby agreed by the Guarantor/s:

- a) That this Guarantee and indemnity shall be a continuing guarantee and shall create a principal obligation for the amount of money hereby secured and shall remain in force so long as any part of the money hereby secured remains owing or may become payable to the Company;
- b) That the Guarantor/s liability under this Guarantee and Indemnity shall not be affected by any giving of time for payment or granting of any indulgence whatsoever, whether by any omission on the part of the Company to enforce any obligation against the Applicant or any other fact, act or omission whereby the liabilities of the Guarantor/s but for this clause might have been diminished or discharged;
- c) That the Guarantor/s acknowledge the terms of the annexed the Company Terms and Conditions;
- d) That the Company may at its own discretion terminate its Agreement with the Applicant (without notice to the Guarantor/s) without affecting the Guarantor/s liability pursuant to this Guarantee and Indemnity;
- e) That this Guarantee and Indemnity shall not in any way be affected by any increase or decrease in the credit limit applying to the Applicant's trading account with the Company from time to time;
- f) That this Guarantee and Indemnity is in addition to and not in substitution for any other security, or right currently held, or which will be taken, by the Company in respect to the Applicant;
- g) That until the Company shall have received payment in full of all the money hereby secured, the Guarantor/s shall not prove in any liquidation or bankruptcy in competition with the Company where the Company seeks to prove in any such liquidation or bankruptcy in respect of any part of the money hereby secured;
- h) That this Guarantee and Indemnity shall continue in force and the Guarantor/s shall remain liable hereunder not withstanding any payments by the Applicant of any part of the money hereby secured.

- 3. Where there is more than one Guarantor their liability under their Guarantee and Indemnity shall be joint and several.
- 4. In this Guarantee and Indemnity 'Applicant' is Applicant named in section 1 above and where the Applicant so named is a Company, any company which by virtue of Section 50 of the Corporations Law is related to the Applicant.

Dated this..... day of .....20 .....

at.....

Name of Guarantor (1).....

Address.....

Signature..... Witness.....

Name of Guarantor (2).....

Address.....

Signature..... Witness.....

Name of Guarantor (3).....

Address.....

Signature..... Witness.....

**Privacy Act Consent.**

The Company, in assessing your application for credit or at such later time in seeking to collect payments from You, may contact a Credit Reporting Agency and pursuant to section 18E(8)(c) of the Privacy Act, give to the agency personal information in relation to your application for credit. Such information may include: identity particulars; the fact that you have applied for credit and the amount; where payments are overdue for 60days and notice has been given to you; where payments have been made after becoming overdue; dishonoured cheques; credit provided by this company has been paid for or otherwise discharged and where appropriate, that a credit infringement has occurred.

I/We hereby agree to the Company, their servants or agents obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to either the commercial credit applied for or in relations to me/us as a guarantor.

I/We agree that the Company may give to and seek from any credit providers information about my/our credit arrangements. I/We understand that this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. I/We understand that this information may be used for the following purposes: to assess an application made by me/us for credit; my/our credit worthiness, to notify other credit providers of a default by me/us; to exchange credit information with other providers as to the status of this line of credit, when I/We are in default with other credit providers at any time whether now or in the future.

In collecting overdue payments in respect of commercial credit provided to me, I/we agree to the Company receiving from a Credit reporting Agency a credit report containing personal information about me/us in relation to such collection.

I/We hereby acknowledge and consent to the above information provided/ disclosed/ exchanged/requested by or to the Company.

Name of Applicant .....

Name of Authorised Officer.....Position.....

Signature.....Date.....