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## AUSTWORLD COMMODITIES PTY LTD (ACN 006 882 631) APPLICATION FOR 30 DAY CREDIT ACCOUNT

- Completing a Credit Application does not infer that credit will be granted.
- The Company reserves the right to refuse credit to any Applicant without explanation.
- The Company reserves the right to suspend or withdraw credit facilities at any time without notice.

**Registered Company Name:**

**Trading Name:**

**ABN:**

**ACN:**

**Street Address:**

**Postal Address:**

**Preferred Method of receiving invoices/statements:**

Post  Fax  Email

**Please Indicate**

Company  Partnership  Sole Prop  Govt. Dept  Trustee Co\*\*

*Special Note: if the Company acts as, or is part of, a Trust/Nominee company then the provision of personal guarantee/s from the Trust Beneficiary / Beneficiaries is required to process this application.*

**Telephone:**

**Fax:**

**Mobile Phone:**

**Email:**

**Accounts Contact Name:**

**Nature of Business:**

**How long in this  
Business:**

**Purchase Order Number Required:** Yes  No

**Estimated Monthly Purchase:** \$

**Group Affiliation:**

**Full name and residential addresses of all the Directors/Partners/Proprietors:**

*(Please attach a separate page if insufficient space)*

Name	Residential Address	Date of Birth	Drivers License
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**Please provide a minimum of three trade credit references:**

<b>Company</b>	<b>Contact Name</b>	<b>Email Address</b>	<b>Telephone No.</b>
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**Signed for or on behalf of the Customer**

**Signature**

**By signing this credit application, you are in agreeance with the credit terms.**

**I agree to the terms and conditions**

## TERMS & CONDITIONS OF SALE AND CREDIT

Austworld Commodities Pty Ltd

Trading Terms & Conditions and Security Agreement

In Consideration of Austworld Commodities Pty Ltd ACN 006 882 631) and its associate principal companies (hereinafter referred to as "The Company" or "Seller") providing commercial credit facilities to the party completing the application (hereinafter referred to as "The Customer" or "Buyer") annexed to these Trading

Terms & Conditions:

- (i) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of goods by The Company and that these Trading Terms & Conditions take precedence over any terms and conditions which may be contained in any document provided by The Customer. Any request from The Customer to The Company for the supply of goods shall constitute acceptance of these Trading Terms & Conditions;
- (ii) The Customer acknowledges and agrees that this agreement constitutes a Security Agreement pursuant to the Personal Property Security Act 2009 (PPSA); and
- (iii) The Customer acknowledges that where The Customer consists of more than one party or entity, liability shall be joint and several.

1. Definitions:

- 1.1 "Seller" shall mean The Company (or any person acting on behalf of and with the authority of the Seller) who sells goods as described on any quotation, work authorisation or other form as provided to the Buyer.
- 1.2 "Buyer" shall mean The Customer (or any person acting on behalf of and with the authority of the Buyer) who buys goods as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer.
- 1.3 "Guarantor" means the person (or persons) who agree to be liable for the debts of the "Buyer" on a principal debtor basis.
- 1.4 "Goods" shall mean all goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller or the Buyer.
- 1.5 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the goods as agreed between the Seller and the Buyer in accordance with Clause 6 of this agreement.
- 1.7 "GST" has the meaning given to it in A New Tax System (Goods and Services Tax) Act (Cth) 1999.
- 1.8 "Products" shall have the same meaning as "goods".
- 1.9 "PPSA" means the Personal Property Securities Act (Cth) 2009.
- 1.10 "PPSR" means the Personal Property Securities Register.
- 1.11 "Security Interest" has the meaning prescribed to it in section 12 of the PPSA.
- 1.12 "Security Agreement", "Commingled Goods", "Financial Statement", "Financing Change Statement", "Verification Statement", "Collateral" and "Registration" have the meanings prescribed to them in section 10 of the PPSA.

2. Acceptance:

- 2.1 Any instructions received by the Seller from Buyer for the supply of goods and/or the Buyer's acceptance of goods supplied by the Seller shall constitute acceptance of the Trading Terms & Conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance, these Trading Terms & Conditions are binding on the Buyer and can only be amended with written consent of the Seller's Managing Director.
- 2.4 Goods are supplied by the Seller only on the basis of the Trading Terms & Conditions herein to the exclusion of anything to the contrary in the terms of the Buyer's order notwithstanding that any such order is placed on terms that purport to override these Trading Terms & Conditions.

3. The Competition and Consumer Act (Cth) 2010 ("CCA") and Fair Trading Acts ("FTA"):

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 3.2 Where the Buyer buys goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

#### 4. Orders For Standard Items:

- 4.1 A Buyer may order goods which are held by The Company as a standard item.
- 4.2 The Buyer agrees that each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due.
- 4.3 When any order is placed, the Buyer shall inform The Company of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of beginning position, the taking of an unfair advantage of The Company and to be unconscionable, misleading and deceptive.
- 4.4 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, change in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

#### 5. Orders For Special Items:

- 5.1 A Buyer may order goods which are not held by The Company as a standard item.
- 5.2 The Company will be required to either manufacture or source such goods, which are categorised as Special Items.
- 5.3 A Buyer warrants to The Company that all drawings and specifications and other design information provided to The Company for the manufacturer of Special Items or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.

#### 6. Price and Payment:

- 6.1 At the Seller's sole discretion the Price for Standard Items shall be either:
  - i) As contained in The Company's Price List, which is subject to variation without notice; or
  - ii) As indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - iii) The Seller's quoted price which shall be binding upon the Seller provided that the buyer shall accept the Seller's quotation in writing within (30) days.
- 6.2 The Price for Special Items shall be at the sole discretion of the Seller and is not subject to clause Prices a specified under Clause 6.1.
- 6.3 Prices are quote ex The Company stores.
- 6.4 Goods are invoiced at Prices effective at the date of dispatch.
- 6.5 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 6.6 Unless otherwise agreed in writing by The Company, Prices quoted are valid for thirty [30] calendar days only and thereafter are subject to increases without notice.
- 6.7 At the Seller' sole discretion payment for approved Buyers shall be due thirty (30) days following the end of the month in which a statement is emailed or posted to the Buyer's address or address for notices.
- 6.8 Time for payment for goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.9 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 3% of the Price) or by direct credit, or by any other method as agreed between the Buyer and the Seller.
- 6.10 All overdue accounts shall be subject to a two (2%) interest charge per month, or other percentage that may be determined by the Company from time to time, which is calculated on a day to day basis on overdue accounts.

#### 7. Cancellation Of Orders:

- 7.1 The Seller may cancel any contract to which these Trading Terms & Conditions apply or cancel delivery of goods at any time before the goods are delivered by giving written notice to the Buyer.
- 7.2 If the Seller gives such notice the Seller shall repay the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 7.3 The Buyer may cancel delivery of any order and the buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 7.4 All cancellation(s) and/or adjustment(s) to orders must be emailed or faxed to The Company.
- 7.5 Under no circumstances will any verbal communication of such cancellation(s) and/or adjustment(s) be accepted by The Company.
- 7.6 Cancellation or variation of special item orders will not be accepted once production has commenced.

#### 8. Delivery Of Goods:

- 8.1 Goods will be delivered or deemed to be delivered when they are delivered to the place nominated by a Buyer. If no such address is nominated then delivery will be deemed to occur at the time when the goods are ready for collection from The Company's premises.

- 8.2 A Buyer authorises The Company to deliver goods to the place nominated by a Buyer and to leave the products at such place whether or not any person is present to accept delivery. The Company shall not be liable on any basis whatsoever for loss incurred by a buyer after the delivery to the nominated place has occurred.
- 8.3 The Company shall endeavour to effect delivery at the time requested by a Buyer but failure to do so shall not confer a right cancellation or refusal of delivery in a Buyer or render The Company is not liable for any damages directly or indirectly sustained by a Buyer as a result thereof.
- 8.4 The Company reserves the right to deliver goods in installments referred to as Back Order. Each Back Order shall be deemed to be sold under the same contract. Failure to deliver any Back Order shall not entitle a Buyer to repudiate the contract in whole or in part.
- 8.5 The Company shall deliver all Back Orders to a Buyer or its Agent or to a Carrier nominated by a Buyer.
- 8.6 Orders to the net value of \$150.00 or over will be delivered F.I.S. to a Buyers store within The Company's metropolitan distribution areas and free on transport charges for all other destinations.
- 8.7 Orders under \$150.00 net value will attract a delivery charge (plus GST) for all areas in Queensland, Victoria, Tasmania, South Australia, New South Wales and Australian Capital Territory as listed below:

- i) BRISBANE (Metropolitan) \$8.00
- GOLD COAST \$8.00
- SUNSHINE COAST \$8.00
- TOOWOOMBA \$8.00
- ii) QUEENSLAND (Country Area) \$15.00
- iii) MELBOURNE (Metropolitan) \$8.00
- iv) VICTORIA (Country Area) and TASMANIA \$15.00
- v) ADELAIDE (Metropolitan) \$8.00
- vi) SOUTH AUSTRALIA (country Area) \$15.00
- vii) NEW SOUTH WALES (Metropolitan) \$8.00
- viii) NEW SOUTH WALES (Country Area) \$15.00
- ix) WESTERN AUSTRALIA (Metropolitan) \$8.00
- x) WESTERN AUSTRALIA (Country Area) As below table

Bunbury	\$22.00	\$80.00	\$115.00
Busselton	\$25.00	\$85.00	\$120.00
Albany/Geraldton	\$26.00	\$90.00	\$130.00
Kalgoorlie	\$28.00	\$110.00	\$150.00
Esperance	\$35.00	\$150.00	\$210.00
NORTHWEST			
Karratha	\$90.00	\$145.00	\$250.00
Port Hedland	\$90.00	\$145.00	\$250.00
Newman	\$90.00	\$145.00	\$240.00
Broome	\$105.00	\$180.00	\$320.00
Kununurra	\$115.00	\$220.00	\$400.00

- xi) AUSTRALIAN CAPITAL TERRITORY \$15.00

- 8.8 Orders under \$250.00 net value will attract a delivery charge (plus GST) for Western Australia and Northern Territory as listed below:

- i) NORTHERN TERRITORY \$28.00

#### 9. Passing Of Risk:

- 9.1 If the Seller retains ownership of the goods nonetheless, all risk for the goods passes to the Buyer on delivery.
- 9.2 If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the goods. The production of these Trading Terms & Conditions by the

Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

- 9.3 Where the Buyer expressly requests the Seller to leave goods outside the Seller's premises for collection or to deliver the goods to an unattended location then such goods shall be left at the Buyer's sole risk and it shall be the Buyer's responsibility to ensure the goods are insured adequately or at all.

#### 10. Retention Of Title:

- 10.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:
- i) The Buyer has paid the Seller all amounts owing for the particular goods; and
  - ii) The Buyer has met all other obligations due by the buyer to the Seller in respect of all contracts between the Seller and the Buyer.
- 10.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the goods shall continue.
- 10.3 It is further agreed that:
- i) Where practicable the goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
  - ii) Until such time as ownership of the goods shall pass from the Seller to the buyer the Seller may give notice in writing to the buyer to return the goods or any of them to the Seller. Upon such notice the rights of the buyer to obtain ownership or any other interest in the goods shall cease; and
  - iii) The Seller shall have the right of stopping the goods in transit whether or not delivery has been made; and
  - iv) If the Buyer fails to return the goods to the Seller then the Seller or the Seller's Agent may (as the invitee of the Buyer) enter upon and into land and premises owned, occupied or used by the Buyer, or any premises where the goods are situated and take possession of the goods; and
  - v) The Buyer is only a bailee of the goods and until such time as the Seller has received payment in full for the amount the Buyer owes to the Seller for the goods, on trust for the Seller; and
  - vi) The buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
  - vii) The buyer shall not charge the goods in any way nor grant nor otherwise give any interest in the goods while they remain the property of the Seller; and
  - viii) The Seller can issue proceedings to recover the price of the Goods sold notwithstanding that ownership of the goods may not have passed to the Buyer; and
  - ix) Until such time that ownership in the goods passes to the buyer, if the goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

#### 11. Personal Property Securities Act (Cth) 2009 ("PPSA")

- 11.1 In this clause:
- i) "Financing Statement" has the meaning given to it by the PPSA;
  - ii) "Financing Change Statement" has the meaning given to it by the PPSA;
  - iii) "Security Agreement" means the Security Agreement under the PPSA created between the Buyer and the Seller by these Trading Terms & Conditions;
  - iv) "Security Interest" has the meaning given to it by the PPSA;
- 11.2 Upon assenting to these Trading Terms & Conditions in writing the Buyer acknowledges and agrees that these Trading Terms and conditions:
- i) constitute a Security Agreement for the purposes of the PPSA; and
  - ii) create a Purchase Money Security Interest ("PMSI") in:
    - a) all goods previously supplied by the Seller to the Buyer (if any);
    - b) all goods that will be supplied in the future by the Seller to the buyer; and
    - c) all proceeds of the sale of such goods.
- 11.3 The Buyer undertakes to:
- i) promptly sign any further documents and/or provide any further information (such information is to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
    - a) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR.
    - b) register any other document required to be registered by the PPSA; and/or
    - c) correct a defect in a statement referred to in Clause 11.3(i)(a) or (i)(b)
  - ii) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR established by the PPSA or releasing the goods charged thereby;

- iii) not register a Financing Change Statement in respect of a Security Interest or PMSI without the prior written consent of the Seller;
  - iv) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the goods in favour of a third party without the prior written consent of the Seller; and
  - v) immediately inform the Seller of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 The Seller and the Buyer agree that sections 96 and 125 of the PPSA do not apply to the Security Agreement created by these Trading Terms & Conditions.
- 11.5 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Buyer waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a Verification Statement in accordance with section 157(3)(6) of the PPSA.
- 11.8 The Buyer shall unconditionally ratify any actions taken by the Seller under Clauses 11.3 to 11.7.

#### 12. Security And Charge:

- 12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- i) Where the Buyer and/or Guarantor(s) (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor(s) agree to mortgage and/or charge all of their joint and/or several interest in said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these Trading Terms & Conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate, a caveat, which shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - ii) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor(s) shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - iii) The Buyer and/or the guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor(s) true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.
- 12.2 The Company may license or sub-contract all or any part of its rights and obligations without the Buyers and/or Guarantor(s) consent.

#### 13. Inspection Of Goods Delivered:

- 13.1 A Buyer shall immediately examine the goods after delivery pursuant to Clause 9.1.
- 13.2 The Company shall not be responsible for any incorrect delivery, storage, alleged defect or damage to the goods unless a Buyer notifies The Company, by email or facsimile, within seven (7) days from the date of delivery.
- 13.3 The Buyer shall afford the Seller an opportunity to inspect the goods within a reasonable time following delivery if the Buyer believes the goods are defective in any way.
- 13.4 If the buyer fails to comply with these provisions the goods shall be presumed to be free from any defect or damage.
- 13.5 For defective goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the goods or repairing the goods.
- 13.6 Where the Buyer has acquired goods as a consumer within the meaning of the Competition and Consumer Act (Cth) 2010 or the Fair Trading Acts of the relevant state or territories of Australia and is therefore also entitled to at the consumer's discretion either a refund of the purchase price of the goods, or repair of the goods, or replacement of the goods.

#### 14. Service Calls:

- 14.1 In the event of a service call being required and it is found that:
- i) The product is not manufactured by The Company; or
  - ii) If faulty installation has occurred; Then a service fee of \$150.00 will be charged.
- 14.2 If any additional work is performed by The Company it will be at a fee of \$150.00 per hour.

#### 15. Return Of Goods:

- 15.1 A Buyer shall advise The Company in writing (i.e. email or facsimile) of the return of faulty, damaged or incorrectly delivered goods within fourteen (14) days of date of delivery.
- 15.2 Unless agreed in writing (i.e. email or facsimile) by The Company, the returned goods are not deemed to be accepted by The Company.

Gold Coast	Melbourne	Sydney	Adelaide	Tasmania	Shanghai
Revision		01/08/17		Revision Of.	

- 15.3 Goods shall not be returned for credit except with the prior approval of The Company or as required by law. Such returns will be at the expense of a Buyer.
- 15.4 The Company will not be liable for goods which have not been stored or used in a proper manner.
- 15.5 A Buyer shall bear all risks for returns until The Company acknowledges receipt of goods by either email or facsimile.
- 15.6 The Company shall not accept any claims for defective goods without inspection and to the satisfaction of The Company's representative that the goods are faulty in manufacture or material.
- 15.7 Alleged defective goods shall be sent, in appropriate packaging, to The Company by an authorised carrier where at The Company's sole discretion goods shall be replaced, repaired or credited to the Buyer's account or as required by law.
- 15.8 The customer shall not be entitled to return any goods supplied without the prior approval of Austworld. The customer will pay a handling charge of 20% of the invoice cost of all the goods returned.

16. Warranty:

- 16.1 Where the Seller is deemed to be the manufacturer then the Seller's warranty applies.
- 16.2 The Seller's warranty period for goods where it is deemed to be the manufacturer, is 12 months from date of purchase.
- 16.3 Where the Seller is not the manufacturer, then the goods are sold subject to each and every manufacturer's terms and conditions and are covered by each and every manufacturer's warranty – schedule of manufacturer's goods and warranty periods applicable are available from the Company's Head Office.
- 16.4 If the Seller is not the manufacturer the Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the goods or unless otherwise required by law.

17. Limitation Of Liability

- 17.1 The Company shall not be liable or responsible for any loss, damage, injury to property or persons resulting from the supply of defective goods unless such loss or damage can be established to the satisfaction of The Company.
- 17.2 Liability, if any, shall to the extent permitted by the Competition and Consumer Act (Cth) 2010, be limited in the absolute discretion of The Company and discharged by one of the following remedies:
- a) The replacement of the goods or supply of equivalent products;
  - b) The repair of the product; or
  - c) A priced reduction by way of credit via a Buyer's Account.

18. Fitness For Purpose

- 18.1 A Buyer agrees that it does not rely on the skill or judgement of The Company in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, formation or assistance provided by The Company is provided without any liability by The Company whatsoever.

19. Application Of Goods:

- 19.1 The Buyer acknowledges and agrees that the Seller shall not accept liability or responsibility for the misuse or inappropriate application of the goods, where it contravenes State or Federal laws or may cause injury or death to any persons or damage to public or private property.

20. Credit Claims:

- 20.1 Any credit allowed shall only be for current goods and if returned in reasonable condition, otherwise a Buyer shall be subject to a 20% restocking fee.
- 20.2 The Company reserves the right to disallow any credit claims made later than thirty (30) days from the date of dispatch or as required by law.
- 20.3 Special Item goods made to the Buyer's specifications are under no circumstances acceptable for credit.

21. Default And Consequence Of Default:

- 21.1 If the Buyer fails to make payment by the due date, The Company will place the account on Stop Credit for further supply of goods or services.
- 21.2 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of 3% (and at the Seller's sole discretion such interest may compound monthly at such a rate) after as well as before any judgment.
- 21.3 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by the Seller.
- 21.4 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursement incurred by the Seller in pursuing the debt including legal costs of a solicitor and own client basis and the Seller's collection agency costs.



- 21.5 Without prejudice to any other remedies the Seller may have, if at any time the buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of goods to the Buyer and any of its other obligations under the Trading Terms & Conditions herein.
- 21.6 If any account remains overdue after thirty (30) days then an amount of 15% shall be levied for administration fees which shall become immediately due and payable.
- 21.7 The Buyer is not permitted to set off against the overdue amounts against monies owed by the Seller to the Buyer.
- 21.8 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment become immediately payable in the event that:
- i) Any money payable to the Seller becomes overdue or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
  - ii) The Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - iii) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 21.9 Where the buyer has left any goods with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the goods and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, The Seller shall have:
- i) A lien on the goods;
  - ii) The right to retain the goods for the Price while the Seller is in possession of the goods;
  - iii) A right to sell the goods.
- 21.10 The Seller's lien shall continue despite the commencement of the proceedings, or judgment for the Price having been obtained.

22. Privacy Act (Cth) 1988

- 22.1 The Buyer and/or the Guarantor(s) agree for The Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and any Guarantor(s) in relation to credit provided by The Company.
- 22.2 The Buyer and/or the Guarantor(s) agree that The Company may exchange information about the Buyer and any Guarantor(s) with another credit provider or named in a consumer credit report issued by a reporting agency for the following purposes:
- i) To assess the Buyer's application;
  - ii) To report any default to other credit providers;
  - iii) Where the Buyer and/or Guarantor(s) are in default with other credit providers to exchange information as to the status of the credit account with The Company; and/or
  - iv) To assess the Buyers and/or Guarantor(s) credit worthiness.
- 22.3 The Buyer and/or Guarantor(s) acknowledge that information provided to another credit to assess creditworthiness may include, but not limited to:
- i) The length of time you have traded with The Company;
  - ii) The average amount of goods purchased from The Company;
  - iii) Specific credit trading terms provided by The Company; and
  - iv) History of payment pursuant to specific trading terms provide by The Company.
- 22.4 The Buyer and/or Guarantor(s) agree to The Company receiving a consumer credit report in order to collect overdue payment on commercial credit pursuant to s.18K(1)(h) Privacy Act (Cth) 1988.
- 22.5 The Buyer and/or Guarantor(s) agree that personal credit data provided may be used and retained by The Company for the following purposes or as required by law:
- i) Provision of goods;
  - ii) Analysing, verifying and/or checking the Buyer's and/or Guarantor(s) credit, payment and/or status in relation to provision of goods;
  - iii) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer and/or Guarantor(s); and
  - iv) Enabling the daily operation of the Buyer's credit account and/or the collection of amounts outstanding in relation to goods supplied by The Company.
- 22.6 The Buyer and/or Guarantor(s) agree that The Company may give information to a credit reporting agency for the following purposes:
- i) To obtain a consumer credit report ; and/or
  - ii) To allow the credit reporting agency to create or maintain a credit information file.

23. Severability:

Gold Coast	Melbourne	Sydney	Adelaide	Tasmania	Shanghai
Revision		01/08/17		Revision Of.	

23.1 Any part of these Trading Terms & Conditions being a whole or part of a clause shall be capable of severance without affecting any other part of these Trading Terms & Conditions.

24. Indemnification:

24.1 The Company shall not be liable for any direct or indirect loss whatsoever, including consequential loss or damage, loss of profits, loss of opportunity or loss of use.

24.2 In the event of a breach of these Trading Terms & Conditions the remedies shall be limited to damages. Under no circumstances shall the liability exceed the Price of the goods as listed in the contract in question.

25. Force Majeure:

25.1 The Company shall not be or be deemed to be in default of breach of any contract as a result of Force Majeure.

25.2 Force majeure shall include any cause beyond the reasonable control of The Company including strikes, lockouts etc.

26. Jurisdiction:

26.1 A Buyer agrees that all contracts made with The Company shall be deemed to be made in the State of Queensland and a Buyer agrees to submit to the jurisdiction of the appropriate Court nominated by The Company in the State of Queensland.

27. Service Of Documents:

27.1 A Buyer agrees that service of any notices or court documents may be affected by forwarding same by pre-paid post or facsimile to the last known address of a Buyer.

27.2 A written Statement of Debt duly signed by an authorised employee of The Company shall be prima facie evidence and proof of the amount of indebtedness by a Buyer to The Company at the time.

28. Notice:

28.1 The Company reserves the right to review the Trading Terms & Conditions herein at any time and from time to time and make any amendments.

28.2 A Buyer agrees that it shall be deemed to have notice of any amendments to these Trading Terms & Conditions immediately upon a change being adopted by The Company irrespective of whether a Buyer has actual notice thereof.

28.3 If there is any inconsistency between these Trading Terms & Conditions and either purported or pre-existing Terms & Conditions or a quotation or a purchase order, then these Trading Terms & Conditions shall prevail, then the quotation, then the purchase order.

29. Guarantee and Indemnity

If the Buyer is a company, the directors of the company must, if required by the Seller, enter into a Deed of Guarantee and Indemnity attached as Annexure "A" to these Terms and Conditions.

## WARRANTY

The following undertaking from Austworld Commodities Pty Ltd (Austworld) shall apply to any purchaser of our product who is classified as a 'Consumer' under the Competition and Consumer Act (Cth) 2010, which includes prescribed requirements for warranties against defects, which are set out in Regulation 90 of the Competition and Consumer Regulations (Cth) 2010, (collectively, the Australian Consumer Law).

Austworld Contact Details  
Austworld Commodities Pty Ltd  
P.O. Box 311  
Ashmore City QLD 4214

Tel: 1300 780 430  
Fax: 1300 780 441  
info@austworld.com.au

### Consumer Guarantees

1. Our goods 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 for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

2. Austworld shall not be liable to the purchaser or user of any product, for any loss or damage (whether direct, indirect or consequential), cost or expenses, suffered or incurred by that purchaser, otherwise than as provided for in this document, the Australian Consumer Law any other law that cannot be excluded.
3. Where a failure does not amount to a major failure, Austworld is entitled to choose between providing you with a repair, replacement or refund. To obtain compensation, you would need to provide documentary evidence of the loss or damage suffered, and documentary evidence that such loss or damage was reasonably foreseeable consequence of a failure by Austworld to comply with a consumer guarantee under the Australian Consumer Law. Such evidence may include photographs, statutory declarations, receipts or reports (e.g. from your plumber), depending on the loss or damage.
4. Consumer Guarantees do not apply if you:
  - 4.1 Got what you asked for but simply changed your mind;
  - 4.2 Misused the product in any way that caused the problem; or
  - 4.3 Knew of or were made aware of the faults in the product before you bought it.

#### Warranty Against Defects

1. In addition to all rights and remedies to which you may be entitled to under the Australian Consumer Law or any other applicable law:
  - 1.1 Austworld warrants its products to be free from defect in materials and workmanship for a period of 12 months from date of purchase; and
  - 1.2 Austworld offers varying extended warranty periods on some of its products and full details are listed on Austworld's website under the Warranty section ([www.austworld.com.au/warranty](http://www.austworld.com.au/warranty)), these are known as Warranties Against Defects.
  2. A Warranty Against Defects only applies to the original purchaser of the product and is not transferable.
  3. Austworld's liability under a Warranty Against Defects is subject to Austworld being satisfied that a defect was caused by defective workmanship or materials and was not caused, or substantially contributed to, by other factors or circumstances beyond Austworld's control, such as:
    - 3.1 Usage: the product was not used in normal domestic circumstances;
    - 3.2 Application: the product was not used for its manufactured application;
    - 3.3 Defective installation:
      - 3.3.1 The product was not installed according to any applicable Australian Standards, including the Plumbing Code AS/NZS 3500.1-2003, if applicable, and Austworld's installation instructions;
      - 3.3.2 The product was not installed by a licensed plumber;
    - 3.4 Maintenance and Repair: the product was damaged during the process of maintenance and/or repair;
    - 3.5 Alteration and Modification: the product was either altered or modified in a manner not recommended by the manufacturer; or was tampered with by person/s without the authority of Austworld.
    - 3.6 Commencement of work: If replacement or repairs are carried out without Austworld prior approval, Austworld reserves the right to void the warranty.
      - 3.6.1 Were carried out without Austworld's prior approval; or
      - 3.6.2 Were not carried out;
    - 3.7 Neglect: the product was not maintained as per the manufacturer's instructions;
    - 3.8 Misuse: the product was not fitted correctly to the outlet;
    - 3.9 Cleaning: the product was cleaned with an abrasive cleaning agent;
    - 3.10 Water Properties: the product incurred water damage due to below standard water properties;
    - 3.11 Water Supply: the lines were not adequately flushed;
    - 3.12 Exposure: the product was exposed to waterborne solids e.g. thread tape, cuttings, grit, etc.
  4. A Warranty Against Defects over product parts is limited to replacement of parts of that are defective in material content and/or workmanship under normal domestic installations, but, unless expressly stated, does not apply to:
    - 4.1 Product finishes (lacquered painted or similar finishes); or
    - 4.2 Ceramic discs, tap jumper valves, "O" rings, washers and other included parts.
  5. Damages and/or labour charges incurred in installation, repair or replacement are not covered by a Warranty Against Defects over product parts.
  6. If a Warranty Against Defects over Ceramic discs (cartridge or spindles) applies, it shall be valid for 5 years, but shall be voided if:
    - 6.1 Mixers have not been installed to Austworld's installation instructions; or
    - 6.2 Water pressure exceeds 1000kpa (it is advisable where day time water pressure exceeds 600kpa to fit a water pressure limiting valve).

#### Reasonable Access

Austworld require adequate access to items to undertake warranty repairs. Austworld will not be responsible for any damage and costs, or consequential damage or costs, where reasonable access is not available to the item and reserve the right to provide a

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replacement item only. If access to the building is not available when the service agent attends, the customer will be liable for the service call costs.

#### Warranty Claim

1. To make a warranty claim:
  - 1.1 In respect of an uninstalled product, a copy of this Warranty, proof of purchase and an explanation of the defect must be sent to us at the address specified in this document; and
  - 1.2 In respect of an installed product,
    - 1.2.1 Contact the store at which the item was purchased and ask for a warranty call to be initiated, or if supplied by a plumber, contact the plumber, and ask for a warranty call to be initiated.
    - 1.2.2 Provide proof of purchase and an explanation of the defect.

#### ANNEXURE "A"

##### DEED OF GUARANTEE AND INDEMNITY

In consideration of Austworld Commodities Pty Ltd, and associate principal companies (hereinafter referred to as 'The Company') granting the Customer (as named in the Application for 30 Day Credit Account and which forms a part of this document) trade credit, I/WE GUARANTEE payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you.

#### I/WE HEREBY AGREE & ACKNOWLEDGE:

- (a) That this is a continuing Guarantee;
- (b) To indemnify The Company against all loss or damage arising from any past, present or future dealing with the Customer or any of us;
- (c) That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by you or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this Guarantee and Indemnity;
- (d) That our liability under this guarantee shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement; or by The Company voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA;
- (e) That this Guarantee becomes binding on those of us that sign this Guarantee irrespective of whether or not all intended signatories execute this Guarantee;
- (f) That The Company is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor;
- (g) That this Guarantee may not be unilaterally revoked by us and remains in force until such time as we receive written confirmation from the Company that we are released from our obligations and liabilities under this Guarantee;
- (h) That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
- (i) Indemnify The Company against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Customer;
- (j) Sign in both our personal capacity and as Trustee of every Trust of which I/We are Trustee and/or a beneficiary;
- (k) To notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship seven (7) days prior to any such change taking effect;

To grant and that The Company may register on the Personal Property Securities Register, a Security Interest in the form of a Purchase Money Security Interest in this Guarantee and that such Security Interest shall include all present and after-acquired property; and

To reimburse The Company for any costs and/or expenses incurred or payable by The Company in relation to registering, maintaining or releasing any financial statement or any other document in respect of any security interest under this agreement.

I/WE HEREBY CHARGE in your favour all our estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Customer or any of us and consent to the lodging by The Company of a caveat or caveats which note your interest in or over any such land or other caveatable property.

I/WE FURTHER AGREE that this agreement shall be governed by and construed in accordance with the laws of the state of Queensland and, where applicable, the Commonwealth of Australia, and I/WE submit to the exclusive jurisdiction of the courts of Queensland.

#### Notice of Disclosure of Your Credit Information to a Credit Reporting Agency

I/We acknowledge and give consent that The Company may make enquiries as to the credit and financial situation of any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as The Company reasonably sees fit from time to time, including but not limited to:

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- Passing the information on to a credit reporting agency;
- Passing the information on to a debt collector; and/or
- Obtaining further personal information relating to any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy Act (Cth) 1988.

GENERAL:

- “I” and “We” and “Us” means each of the Guarantors jointly and severally.
- The invalidity or unenforceability of any provision of this Guarantee and Indemnity shall not affect the validity or enforceability of the remaining provisions.
- Clerical errors are subject to correction and do not bind The Company.

I/We have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

Guarantor Name  
Signature  
Drivers License Number  
Witness Name  
Witness Signature

Signature Date  
Date of Birth  
Signature Date

Guarantor Name  
Signature  
Drivers License Number  
Witness Name  
Witness Signature

Signature Date  
Date of Birth  
Signature Date

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