



Application For Credit Account

Nature of Organisation

☐ Sole Trader ☐ Partnership ☐ Proprietary Company ☐ Trust ☐ Other _____

Trading Name: _____

Legal Name (Customer): _____

Trust Name (if applicable): _____

Postal Address: _____

Telephone: () _____ Mobile: _____

Registered Office: _____ Paid up Capital: _____

Email: _____

ABN: _____ ACN: _____

ABN of Trust (if applicable): _____

Previous Address Details (if less than 2 years): _____

Details of Partners (if Partnership)

1. Full Name: _____

Home Address: _____

Home Phone: _____

Licence Number: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

Licence Number: _____

Details of Directors (if Pty Ltd)

1. Full Name: _____

Home Address: _____

Home Phone: _____

Licence Number: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

Licence Number: _____



Has any director/proprietor/trustee or partner ever been declared bankrupt or had their affairs administered in accordance with the Bankruptcy Act? YES/NO

- If YES – provide details _____

Contact Person for Accounts: _____

Name of Bank: _____ Branch: _____

Bank Account Number: _____ Requested Limit per month: \$ _____

Solicitors Name and Address: _____

Accountants Name and Address: _____

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

(a) Business Name: _____ Branch: _____

Phone: _____ Monthly Spend:\$ _____

Email: _____

Length of time using supplier: _____ Years _____ Months

(b) Business Name: _____ Branch: _____

Phone: _____ Monthly Spend:\$ _____

Email: _____

Length of time using supplier: _____ Years _____ Months

(c) Business Name: _____ Branch: _____

Phone: _____ Monthly Spend:\$ _____

Email: _____

Length of time using supplier: _____ Years _____ Months

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit enquiries. I have read and understand the terms and conditions contained in Section A (attached) and Section B - TERMS AND CONDITIONS OF TRADE (also attached) of SBI Group which form part of, and are intended to be read in conjunction with, this Credit Application Form and agree to abide by these terms and conditions.



Signed on behalf of the Customer:

Signature: _____ Print Name: _____

Position Held: _____ Date: _____

Signed on behalf of the Guarantor (must be completed if Pty Ltd):

Signature: _____ Print Name: _____

Position Held: _____ Date: _____

Address: _____

Office Use Only:

☐ Approved ☐ Denied Credit Limit: \$ _____

Name: _____ Signature: _____

Section A

1. By signing this Agreement you (being the Customer stated in the Application):
 - (a) apply for a credit account;
 - (b) declare that all information provided in the Application is true and correct and that no relevant information in regard to credit worthiness has been withheld;
 - (c) have reviewed and agreed to be bound by this Agreement which includes the Terms and Conditions set out in Section B (as amended from time to time);
 - (d) undertake to promptly provide any financial statements if and when requested by SBI Group ("us/we") from time to time;
 - (e) acknowledge that we may amend the Terms and Conditions set out in Section B from time to time by notice in writing to you. All purchases of Goods and Services after receipt of that notice will be subject to the amended Terms and Conditions;
 - (f) agree to enter into or procure the entry of any guarantees, securities or the like if and when required by us to secure the provision of Goods and/or Services on credit and to pay for all legal costs, stamp duty or other expenses incurred in preparation of or enforcement of such guarantees, securities or the like;
 - (g) agree to accept the credit limit allocated by us at our sole discretion, and that if the credit limit is reached by the Customer, an immediate stop credit will be put on the account without any obligation on the Company to notify the Customer;
 - (h) acknowledge and agree that the Company, without providing any reason, may at any time and in its absolute discretion increase, decrease or withdraw your credit facility or limit without notice;
 - (i) warrant that each person who signs this Agreement is authorised to do so and that such signature(s), (save for those signing as Guarantors), will bind the Customer to the agreement herein made;
 - (j) if you are a trustee of any trust:
 - (i) you warrant that you are the sole trustee of the trust as described in the Application;
 - (ii) agree that you are bound by this Agreement both personally and in your capacity as trustee of the trust;
 - (iii) acknowledge that in making the application and assuming obligations under this Agreement you are doing so for the purposes of the trust and for the benefit of the beneficiaries of the trust;
 - (iv) must provide a stamped copy of the deed of trust constituting the trust (with all variations) if requested to do so;
 - (v) acknowledge that you have all the necessary authorisations to make this Application and to enter into this Agreement;
 - (vi) agree you will not retire or resign or approve a new or additional trustee in respect of the trust without our prior written consent;
 - (vii) undertake not to:
 - A. distribute capital of the trust; without our consent;
 - B. amend the trust deed without our consent;
 - C. grant any other security interest over the Goods without our consent;
 - D. breach the terms of the trust.
 - (k) if you are a partner in a partnership:



- (i) the terms "you" and "Customer" comprise each person/entity who at any time on or after the date of the Application, carries on business in partnership with other persons under the trading name set out in the Application or under any other name substituted for that name (**Partnership**);
 - (ii) the partners agree to procure any new partner into the Partnership to execute, within 7 days of becoming a new partner, an acknowledgment under which he/she will agree to be bound by the terms and conditions of this Agreement as if he/she had been a partner at the date of this application;
 - (iii) that any person who ceases to be a partner of the Partnership will be and remain liable as a principal debtor for the obligations of the "Partnership" until we release that person.
 - (l) for the purposes of assessing credit-worthiness, and in accordance with the Privacy Act 1988 (Cth) you:
 - (i) authorise us and our agents to make such enquiries as we deem necessary from persons nominated by you as trade referees, the financiers and insurers and credit reporting agencies (the **information sources**);
 - (ii) consent to the Information sources providing any information they may legally give to us including a credit report containing personal credit information about you;
 - (iii) consent to us disclosing personal Information we collect about you to a credit reporting agency;
 - (iv) consent to us disclosing personal information we collect about you to our Insurance brokers and/or insurance underwriters for the purpose of providing us with insurance.
 - (m) warrant that:
 - (i) unless you have advised us to the contrary, you have not entered into this Agreement In the capacity of a trustee of any trust or settlement;
 - (ii) you will immediately notify us of any changes of address or in ownership of your business;
 - (iii) you will waive any rights that you may have in accordance with the Consumer Credit Code (to the extent permitted by law);
 - (iv) this Application for Credit is for the supply of goods or services for use in a commercial or business operation and is not for personal, domestic or household use or consumption;
2. By signing this Agreement we agree to provide Goods or Services on credit to you from time to time subject to and pursuant to the Terms and Conditions set out in this Agreement (as amended by us from time to time).





SECTION B
TERMS AND CONDITIONS OF TRADE
SBI Group

1. Definitions

In these Terms and Conditions:

- 1.1 Agreement means the agreement between the Customer and the Company for purchasing Goods on credit comprising the Application, the terms and conditions set out in Section A of the Application and these Section B - Terms and Conditions of Trade as amended from time to time.
- 1.2 "Application" means the Application For Credit Account completed by the Customer.
- 1.3 Change in Control in respect of the Customer means the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):
 - (a) control the composition of more than one half of the board of directors;
 - (b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members; or
 - (c) hold or have a beneficial interest in more than one half of the issued share capital.
- 1.4 "Company" means SBI Group and its successors and assigns.
- 1.5 "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer and its successors and assigns.
- 1.6 "Goods" means Goods supplied by the Company to the Customer (and where the context permits includes any supply of Services).
- 1.7 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis and shall include all directors of the Customer and any other person or entity nominated by the Company in its absolute discretion.
- 1.8 "Price" means the cost of the Goods or Services to be paid by the Customer as agreed between the Company and the Customer subject to clause 4 of these Terms and Conditions.
- 1.9 "Price List" means the Company's prices for Goods and Services as notified to the Customer by the Company from time to time and, failing such notification, as set out on a quotation or current price list.
- 1.10 "SBI Group" SBI Landfill Pty Ltd (ABN 73 166 053 765) and SBI Waste Management Pty Ltd (ABN 47 629 949 613) trading as SBI Landfill, SBI Waste Management and W J & M H Stevenson Family Settlement ATF Stevenson Bros Industries Pty Ltd T/As SBI Cranbourne Quarries (ABN 40 577 996 360) (collectively SBI Group) and where relevant means each entity jointly and severally.
- 1.11 "Services" means services supplied by the Company to the Customer.
- 1.12 "Terms and Conditions" means the terms and conditions set out in this Section B and (where relevant) includes the terms and conditions set out in Section A and the Application forming part of this Agreement.
- 1.13 "We"/"us" means SBI Group.
- 1.14 "You" means the Customer.

2. Supply

- 2.1 You will purchase and we will supply Goods and/or Services to you on the Terms and Conditions.

3. Acceptance

- 3.1 Any instruction or order received by the Company from the Customer for the supply of Goods or Services and/or the Customer's acceptance of Goods or Services supplied by the Company will constitute a binding offer to purchase those Goods or Services. We will notify you in writing of our acceptance of your offer, or alternatively, the Delivery of the Goods or supply of the Services will be deemed acceptance of your offer to purchase on the terms and conditions contained herein.
- 3.2 We reserve the right to modify the Goods or Services or cease the manufacture of the Goods or supply of the Services without notice.
- 3.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these Terms and Conditions by the Customer these Terms and Conditions are irrevocable and can only be terminated in accordance with these Terms and Conditions or with the written consent of the Company.
- 3.5 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.
- 3.6 The Customer undertakes to give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name, Change in Control and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, phone number, directors, ACN, ABN, entity structure, directors or business practice).

4. Price and Payment

- 4.1 If a quotation is provided by the Company to the Customer:
 - (a) subject to subclause 4.1(b), the Price will be as quoted if it is accepted in writing by the Customer within 14 days.
 - (b) a variation from the plan of scheduled works or specifications will be charged as set out in the quotation and will be shown as variations on the invoice. Payment for all variations must be made in full on or before the due date for payment of the relevant invoice.
- 4.2 If a quotation is not provided to the Customer:
 - (a) the Price will be as detailed on the Company's current Price List as at the date of Delivery of the Goods or supply of the Services; or
 - (b) as set out on invoices provided by the Company to the Customer in respect of the Goods and/or Services supplied.
- 4.3 The Company may vary the price of Goods and Services set out in the Price List from time to time.
- 4.4 At the Company's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and/or Services and shall become immediately due and payable.
- 4.5 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods and/or Services.
- 4.6 At the Company's sole discretion, for certain approved Customers payment will be due thirty (30) days following the end of the month in which the invoice is dated.



- 4.7 Payment must be made by cash on delivery, cheque, bank cheque, credit card, direct credit, or by any other method as agreed between the Customer and the Company.
- 4.8 The Customer shall not set off against any payments due to the Company.
- 4.9 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.
- 4.10 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 4.11 In addition to interest payable, if any account remains unpaid at the end of the second month after supply of the Goods or Services the sum of the greater of \$20.00 or 10% of the amount overdue may be levied for administration fees which will become immediately due and payable.

5 Delivery of Goods

- 5.1 Delivery of the Goods to the Customer means:
 - (a) delivery by the Company to the Customer's address or nominated address;
 - (b) delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Customer;
 - (c) delivery of Goods to a third party nominated by the Customer; and
 - (d) collection of Goods from the Company's business address by the Customer or the Customer's contractor or agent.
- 5.2 Where there is no agreement about delivery to the Customer, the Company may deliver Goods to a carrier selected by the Company.
- 5.3 Delivery of Goods (including, but not limited to, any carrier or transit costs) is to be paid for by the Customer.
- 5.4 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with these Terms and Conditions.
- 5.5 The Customer shall make all arrangements necessary to take delivery of Goods whenever and however they are tendered for delivery.
- 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity delivered is greater or less than the quantity purchased provided that:
 - (a) Such discrepancy in quantity does not exceed 5%; and
 - (b) The Price is adjusted pro rata to the discrepancy.
- 5.7 The Company will not be responsible for non-delivery or delay in delivery of any Goods or Services due to any cause beyond our reasonable control. Where such non-delivery or delay occurs, we may deliver the Goods at any subsequent time or date and you must accept and pay for them. Where we give a date of intended delivery, this will be subject to the ordered Goods and/or Services being available and our being able to make the delivery on that date and delivery at any later date will be deemed compliance with this Agreement and you must accept and pay the Price as if delivery had occurred on the intended date of delivery.
- 5.8 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.9 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any part of the Goods) promptly or at all.

6 Risk

- 6.1 All risk for the Goods passes to the Customer on delivery in accordance with clause 5.1.
- 6.2 If any of the Goods are damaged or destroyed prior to delivery, the Company is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

7 Customer's Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind, or terminate this Agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to it by any servant or agent of the Company and the Customer acknowledges that it buys the Goods or Services relying solely upon its own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty, other than the warranties set out in the Australian Consumer Law, if applicable.

8 Defect/Returns of Goods

- 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company of any alleged defect, shortage or excess (above the 5% variation allowed by these Terms and Conditions) in quantity, damage or failure to comply with the description or quote. The Customer must notify the Company and provide the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 8.2 Without in any way limiting our discretion to refuse to accept the return of any Goods, the following Goods will not be returnable:
 - (a) any Goods that have been held by you for more than fourteen (14) days; or
 - (b) any Goods which are not in original condition; or
 - (c) any Goods that are manufactured as made to order items unless faulty. Any manufacturing surcharge is non-refundable.
- 8.3 For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.

9 Lien

- 9.1 Where the Company is still in possession of the Goods and payment of the Price is due and payable, and the Company has not received or been tendered the whole of the Price, the Company shall have:
 - (a) A lien on the Goods;
 - (b) The right to retain them for the Price;
 - (c) A right of stopping the Goods in transit prior to delivery
 - (d) A right of resale, and
 - (e) The right of disposal.



- 9.2 The lien of the Company shall continue despite the commencement of proceedings or judgement for the Price having been obtained.
- 10 Australian Consumer Law
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law, except to the extent permitted by those Acts where applicable.
- 11 Personal Property Securities Act
- 11.1 For the purposes of this clause 11 the following applies:
- (a) PPSA means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
 - (b) a term used in this clause 11 has the same meaning as in the PPSA unless specifically stated otherwise.
- 11.2 In consideration of the Company supplying the Goods to the Customer at the request of the Customer, the Customer, by signing these Terms of Trade:
- (a) grants to the Company, at the Company's discretion, a security interest or purchase money security interest (PMSI) in the Goods;
 - (b) agrees that any of the Goods or proceeds of sale of the Goods coming into existence after the date of these Terms of Trade will come into existence subject to:
 - (i) the security interest or PMSI granted in these Terms of Trade; and
 - (ii) the terms of these Terms of Trade;without the need for any further action or agreement by any party;
 - (c) agrees that the Customer has received valuable consideration from the Company and that it is sufficient; and
 - (d) agrees that the security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Customer when the Customer takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Terms of Trade.
- 11.3 The Company may, by notice to the Customer at any time, require the Customer to take all steps that the Company considers necessary or desirable to:
- (a) ensure that these Terms of Trade or any security interest or PMSI arising under them, are enforceable against the customer or any third party; and
 - (b) protect, perfect, record, or better secure the position of the Company under these Terms of Trade as a first ranking security.
- 11.4 In relation to registration and notices:
- (a) The Company reserves the right to register a financing statement in respect of any Goods supplied by the Company to the Customer under these Terms of Trade [and in respect of which credit has been extended by the Company to the Customer].
 - (b) The cost and expense of registering a financing statement or a financing change statement is to be paid by the Customer and may, where applicable, be debited against the Customer's credit account with the Company.
 - (c) The Customer:
 - (i) waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Terms of Trade, unless the notice or statement is required by law and cannot be excluded; and
 - (ii) agrees to comply with any notice from the Company under this clause 11 at its cost and expense.
 - (d) The Customer agrees:
 - (i) not to allow any person to register a financing statement over any of the Goods supplied by the Company without the prior written consent of the Company; and
 - (ii) that it must immediately notify the Company if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.
 - (e) The Customer agrees to perfect and maintain any security interest or PMSI that it may have in the Goods under the PPSA.
- 11.5 If the Company perfects any security interest or PMSI that the Company has in relation to the Goods, the Customer must not do anything that could materially adversely affect:
- (a) the Company's business; or
 - (b) in the opinion of the Company, the Company's security position under these Terms of Trade.
- 11.6 The Customer irrevocably grants to the Company the right to enter on the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Company has cause to exercise any of the Company's rights under the PPSA, and the Customer indemnifies the Company from any claims made by any third party as a result of that exercise.
- 11.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these Terms of Trade, the Company and the Customer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.
- 11.8 Despite any statement to the contrary by the Customer, every payment to the Company in respect of the Goods must be taken as a payment:
- (a) first, of the amounts held by the Customer in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
 - (b) secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
 - (c) thirdly, for any Goods that the Customer has sold but for which it has not received the proceeds; and
 - (d) fourthly, for whatever goods the Customer has not sold as the Company elects.
- 11.9 The Company and the Customer may not disclose any information of a kind referred to in section 275(1) that is not in the public domain.
- 11.10 If the Customer becomes insolvent, without prejudice to any other rights of the Company:
- (a) the Customer's right to sell the Goods in the ordinary course of business in accordance with the PPSA and any other rights of the Customer in respect of the Goods immediately cease; and
 - (b) the Customer must immediately return to the Company the Goods in which title has not passed as provided for under clause 11.
- 12 Services
- 12.1 The Customer is obliged to:
- (a) providing accurate instructions and orders in relation to the Services;



- (b) pay for the delivery of material relevant to the Services to and from the Company's place of business, unless agreed otherwise by the Company;
- (c) if applicable, comply with our Fill Material Statement and with all environmental protection rules and legislation.

12.2 The Customer may request a change to the Services, which must in writing and agreed by the Company.

12.3 The Company accepts no liability for:

- (a) damage or loss to Customer's materials, to property, or to third parties, during transport of materials to and from the Company's place of business in relation to the Services;
- (b) a breach by the Customer of environmental protection rules and laws, and the Customer indemnifies the Company for any costs, losses or damages suffered by the Company resulting from a breach by the Customer of environmental protection rules and legislation; or
- (c) Inaccurate orders provided by the Customer.

13 Intellectual Property

13.1 All Company intellectual property rights are and will remain the exclusive property of the Company. The Customer shall have no right, title or interest to or in the Company's intellectual property rights.

13.2 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods and/or Services shall not infringe the rights of any third party.

14 Title

14.1 Ownership of, or title in, the Goods will not pass to the Customer until the Customer has paid to the Company the full invoiced Price for the Goods.

14.2 The Customer agrees with the Company that they will treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.

14.3 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods (or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
- (b) The Customer agrees that if the Customer fails to pay the full Price for the Goods by the due date for payment, the Company or the Company's agent may enter the Customer's land or premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer where the Goods are situated and take possession of the Goods. The Company will have no liability or responsibility for any damage caused by such entry.
- (c) The Customer is only a bailee of the Goods and until such time as the Company receives payment in full for the Goods then the Customer holds any proceeds from the sale or disposal of the Goods on trust for the Company and must account to the Company for the proceeds of any sale of the Goods
- (d) The Customer shall not deal with the money of the Company in any way which may be adverse to the Company.
- (e) Receipt by the Company 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 Company's ownership of rights in respect of the Goods will continue.
- (f) The Customer shall not grant nor otherwise give any interest in the Goods while they remain the property of the Company.
- (g) The Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Company arising out of these Terms and Conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
- (i) If the Goods are converted into other products or made into fixtures prior to full payment of the Price, the parties agree that the Company will have an interest in the end product or fixture, or any other land of the Customer and/or Guarantor, pursuant to clause 15.

15 Security And Charge

15.1 Notwithstanding anything to the contrary contained in these Terms of Trade or any other rights which the Company may have:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in that land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under this Agreement. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable under this Agreement have been met.
- (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause 15.1 (a) and (b) inclusive, the Customer and/or the Guarantor (if any) irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.



16 Cessation of Supply

Our agreement to continue to supply Goods and/or Services to you is always conditional upon our being satisfied of your ability to pay and comply with this Agreement. If we cease to be so satisfied we may suspend and/or terminate supply of Goods and/or Services and will not be liable in any way for any claim, damage, expense or cost suffered by you.

17 Default and Termination

17.1 The Company may terminate this agreement for any reason on 10 Business Days' notice to the Customer. If this Agreement is terminated pursuant to this clause 16.1, all amounts owing to the Company by the Customer become due and payable.

17.2 The Company may terminate this Contract with immediate effect by delivering notice of the termination to the Customer, if the Customer:

- (a) defaults in payment of any invoice when due;
- (b) otherwise breaches this Agreement and fails to rectify such breach with seven (7) days notice; or
- (c) cancels delivery of Goods or supply of Services.

17.3 the Company may terminate this agreement with immediate effect without notice if the Customer:

- (a) becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation; or
- (b) ceases trading or is wound up.

17.4 In the event that this Agreement is terminated then without prejudice to the Company's other remedies at law:

- (a) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed;
- (b) all amounts owing to the Company shall, whether or not due for payment, immediately become payable;
- (c) resell any Goods concerned; and
- (d) where clauses 17.2 or 17.3 apply, the Customer shall indemnify the Company from and against all the Company's cost and disbursements including on a solicitor and own client basis and in addition all of the Company's nominees costs of collection.

18 Unpaid Company's rights to dispose of Goods

18.1 In the event that:

- (a) the Company retains or regains possession or control of the Goods; and
- (b) payment of the Price is due to the Company; and
- (c) the Company has made a demand in writing of the Customer for payment of the Price; and
- (d) the Company has not received the Price of the Goods,

then the Company may sell the Goods to a third party. We may recover from you as liquidated damages for our loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach).

19 Liability

19.1 To the extent permitted by law, all conditions and warranties which would otherwise be implied in this Agreement (by statute, general law, equity or otherwise) are expressly excluded.

19.2 To the extent permitted by law, the Company excludes all liability:

- (a) for loss of profit, goodwill, business opportunity or anticipated savings or benefits;
- (b) for indirect or consequential loss or damage;
- (c) for loss or damage arising from termination;
- (d) for loss or damage caused by your negligence; and
- (e) to third parties in connection with this Agreement.

19.3 We make no representation, warranty or undertaking about the compliance of the Goods with any statutory requirements relating to the use of Goods by the Customer.

19.4 The Customer agrees that, to the extent permitted by law, the Company's liability for all claims connected directly or indirectly with this Agreement is limited to the Price paid by the Customer to the Company in the preceding 12 month period. Legislation providing for apportionment of liability also applies.

19.5 The Customer will be liable for, and will indemnify the Company against, any costs, losses or damages incurred by the Company caused by a breach of this Agreement by the Customer.

20 General

20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 This Agreement is governed by the laws of Victoria. Each party irrevocably submit to the exclusive jurisdiction of the Victorian courts and federal courts sitting in Victoria. The Company takes no responsibility for changes in the law which affect the Goods or Services supplied.

20.3 The Company may assign, license or sub-contract all or any part of its rights and obligations under this Agreement.

20.4 The Company reserves the right to amend these Terms and Conditions at any time and from time to time. The amended Terms and Conditions will take effect from the date on which the Company notifies the Customer of such change.

20.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm, pandemic or epidemic, Government order or regulation, or other event beyond the reasonable control of either party.

21 Good Faith

The Parties to this Agreement acknowledge and agree that the performances required by the provisions of this Agreement shall be undertaken in good faith, and with all Parties dealing fairly with each other.